

# **Texas Civil Procedure: Trial and Appellate Practice, 2022-2023 Edition**

## **2024 SUPPLEMENT**

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# Texas Civil Procedure: Trial & Appellate Practice

## 2024 Supplement

### Chapter 1

#### Page 3

##### § 1.01

[A][1][a]

**Insert at the end of the first paragraph:**

The trial court may set a custom calendar for the case by entering a pre-trial or scheduling order, that may include the date of the trial setting. Tex. R. Civ. P. 166.

#### Page 5

##### § 1.01

[A][1][c]

**Replace the first paragraph on page 5 with:**

The clerk of the court must give notice of a trial setting to all parties on written request. Tex. R. Civ. P. 246. Local rules differ on whether it is the responsibility of the clerk or the requesting party to give notice of trial settings in other cases.

#### Page 12

##### § 1.01

[A][3]

**Note (3), first sentence :**

Delete “by regular mail” and replace with “as provided by Rule 21(f)(10).”

#### Page 13

##### § 1.01

[A][3]

**Note (5), first sentence:**

Delete “mailing” and replace with “sending”

#### Page 29

##### 1:01

[B][3]

**Note 4, first sentence:**

Delete “by mail”

## Chapter 2

### Page 68

#### 2:01

#### [C] Summoning Jurors

#### Second paragraph, First Sentence:

Delete “the county sheriff” and replace with “the county sheriff, constable or clerk”

### Page 69

#### 2.01

#### [C] Summoning Jurors

#### Second paragraph

Add item (6) to the first sentence, so that it reads:

Prospective jurors are required to provide biographical and demographic information about themselves on juror information forms that is relevant to service as a jury member, including the person's (1) name, sex, race and age; (2) residence address and mailing address; (3) education level, occupation and place of employment; (4) marital status and the name, occupation, and place of employment of the person's spouse; (5) citizenship status and county of residence; and (6) any electronic address.

### Page 69

#### 2.01

#### [C][1]

**Move the following from [C][1] to [D][1] at the end of the first Paragraph in this section:**

However, a twelve-person jury may be seated in a civil case pending in a statutory county court if the statute creating that court so provides or the matter in controversy in the court's jurisdiction exceeds \$250,000, unless the parties agree to a lesser number of jurors. Govt. Code 25.0007.

### Page 72

#### 2.01

#### [D][3]

#### (a)(1)

Delete “70” Replace with “75”

**Page 122**

**2.02[C][2]**

**Replace note 3 with:**

(3) *When Race Is Not Sole Reason for Exercise of Strike*. The holding in *Powers* that an equal protection violation occurs when race is “a factor” in the exercise of a preemptory strike appears to be at odds with the standard articulated in *Batson* that the Constitution is violated when prospective jurors struck “solely” on account” of race. The Texas Supreme Court explained: “*Powers* remains this Court’s precedent, but given intervening developments in the law, its apparently broad holding is best understood as limited to the rare circumstance in which an admission of racial preference in jury selection appears explicitly in the record. Therefore, *Powers*’ statement that a *Batson* violation occurs when race is ‘a factor’ in striking a juror does not control in the typical *Batson* case when courts are asked to discern counsel’s motivations from a mixture of imputed and proffered explanations.” *United Rentals North America, Inc. v. Evans*, 668 S.W.3d 627, 636 (Tex. 2023). In *United*, counsel explained its challenged exercise of a preemptory strike of a black female was based on race. He stated, “We know from our focus groups that the African-American female is the most favorable juror for this cause for whatever reason.” This admission alleviated the need to conduct the three-part *Batson* analysis. The preemptory strikes consistent with that admission were constitutionally infirm.

## **Chapter 8**

**Page 639**

**8.06**

**[D] Equitable Bill of Review**

**First Paragraph, last sentence.**

Delete: “first-class mail”

Replace: “by sending the judgment or order to the parties as provided by Rule 21(f) (10).”

Delete: “advising of the judgment.”

## **Chapter 9**

**Page 649**

**9.01**

**Replace (14), (15), (15) and (15) with:**

- (14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section 54.012(6) or 214.0012, Local Government Code [to enforce ordinances relating to dangerously damaged or deteriorated structures or improvements]; or

- (15) makes a preliminary determination on a claim under Section 74.353 [whether a claim made by the claimant is a health care liability claim]; or
- (16) overrules an objection filed under Section 148.003(d) or denies all or part of the relief sought by a motion under Section 148.003(f) [the sufficiency of an expert report that provides a factual and scientific basis for the assertion that the defendant's failure to act caused the individual to contract a pandemic disease]; or
- (17) grants or denies a motion for summary judgment filed by a contractor based on Section 97.002 [of the Texas Civil Practices & Remedies Code [who claims non-liability to a claimant for personal injury, property damage, or death arising from a highway, road, or street constructed for the Texas Department of Transportation].

**Page 650**

**9.01**

**Replace (d)-(f) with the following 9d)-(h):**

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

- (1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and
- (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

- (1) the parties agree to a stay; or
- (2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

(g) If a court of appeals does not accept an appeal under Subsection (f), the court shall state in its decision the specific reason for finding that the appeal is not warranted under Subsection (d).

(h) The supreme court may review a decision by a court of appeals not to accept an appeal under Subsection (f) de novo. If the supreme court concludes that the requirements to permit an appeal under Subsection (d) are satisfied, the court may direct the court of appeals to accept the appeal. [See Tex. R. App. P. 28, TEX. R. CIV. P. 168]

**Page 675**

**9.02 [B](3)**

**Notes & Questions**

Add to Note 2 before the phrase “Assuming the courts of appeal...” in the third line from the bottom of the page.

The Texas Supreme Court in *Patel v. Nations Renovations, LLC*, 661 S.W.3d 151, 155 (Tex. 2023) held the following language in a judgment met the *Lehmann* test for finality: “IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Award is hereby confirmed, and Nations, Huntley, and CHC are therefore bound by the terms therein[,] ... that Nations have all writs and processes to aid in execution of this judgment[,] ... that all relief not granted herein is denied[,] ... [and] that this is a final judgment and appealable.” The Court recognized that while each statement alone would not necessarily be enough, together they indicate with unmistakable clarity the judgment is final for purposes of appeal.

## Chapter 10

**Page 681**

**10.01 [A]**

**Govt. C. § 22.220**

**Delete (a)-(c) Replace with:**

(a) Except as provided by Subsection (d), each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds \$250, exclusive of interest and costs.

(b) If a court of appeals having jurisdiction in a case, matter, or controversy that requires immediate action is unable to take immediate action because the illness, absence, or unavailability of the justices causes fewer than three members of the court to be present, the nearest available court of appeals, under rules prescribed by the supreme court, may take the action required in the case, matter, or controversy.

(c) Each court of appeals may, on affidavit or otherwise, as the court may determine, ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.

(d) The Court of Appeals for the Fifteenth Court of Appeals District has exclusive intermediate appellate jurisdiction over the following matters arising out of or related to a civil case:

- (1) matters 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 as defined by Section 61.003, Education Code, or 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, other than:

- (A) a proceeding brought under the Family Code and any related motion or proceeding;
  - (B) a proceeding brought under Chapter 7B or Article 17.292, Code of Criminal Procedure;
  - (C) a proceeding brought against a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction;
  - (D) a proceeding relating to a mental health commitment;
  - (E) a proceeding relating to civil asset forfeiture;
  - (F) a condemnation proceeding for the acquisition of land or a proceeding related to eminent domain;
  - (G) a proceeding brought under Chapter 101, Civil Practice and Remedies Code;
  - (H) a claim of personal injury or wrongful death;
  - (I) a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;
  - (J) a proceeding brought under Chapter 55, Code of Criminal Procedure;
  - (K) a proceeding under Chapter 22A, Government Code;
  - (L) a proceeding brought under Subchapter E-1, Chapter 411, Government Code;
  - (M) a proceeding brought under Chapter 21, Labor Code;
  - (N) a removal action under Chapter 87, Local Government Code; or
  - (O) a proceeding brought under Chapter 841, Health and Safety Code;
- (2) matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case; and
  - (3) any other matter as provided by law.

**Page 688**

**10.01 [A]**

**Notes and Questions**

**Add as New Note 1:**

(1) *Fifteenth Court of Appeals*. A 15th Court of Appeals was created effective September 1, 2024, and its “district” is composed of all Texas counties. That Court will be based in Austin and composed of a chief justice and four justices; however, for the first three years after the court’s creation, the court will consist of a chief justice and two justices. All justices will be elected in statewide races. Because the procedures for that Court have not been finalized, this chapter does not address that subject. The remainder of this chapter addresses the 1st-14th Court of Appeals.

**Make existing Note:**

- (2) Geographical Restrictions.

Also, add “other” in second sentence between the words “fourteen” and “court”

**Page 699**

**10.02[B]**

**Notes and Questions**

**Add as new last paragraph to (4) Lowering Amount of Security:**

More recently, the Texas Legislature provided additional relief to judgment debtors on a money judgment but could supersede the judgment with real property collateral. Specifically, “On a showing by a judgment debtor with a net worth of less than \$10 million that posting security in the amount required to suspend enforcement of a money judgment would require the judgment debtor to substantially liquidate the judgment debtor’s interests in real or personal property necessary to the normal course of the judgment debtor’s business, the trial court must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.” Tex. Civ. Prac. & Rem. Code Ann. § 52.007. Presumably, this means that real or personal property may be sufficient alternate security in lieu of a supersedeas bond or cash deposit. See Tex. R. App. P. 24.2(e).

**Page 701**

**10.02[B]**

**Note (11)**

Re-number Note (11) as (13)

Delete the text beginning with: “It is important to note that the bond will not be released merely because ...”

**Insert as new Note (11):**

(11) *Supersedeas Bond Effective When Filed.* A supersedeas bond is effective upon filing. Therefore, it is no longer necessary to obtain the approval of the clerk before filing a supersedeas bond although other parties may contest it. Tex. R. App. P. 24.1(b)(2).

**Insert as new Note (12):**

(12) *Continuing Trial Court Jurisdiction.* The trial court has continuing jurisdiction, notwithstanding an appeal, to entertain motions pertaining to appellate security due to changed circumstances. Tex. R. App. P. 24. For example, a trial court may lower the amount of appellate security required when an intermediate appellate court reduces the trial court judgment to further suspend enforcement of the judgment pending appeal to a court of last resort. Tex. Civ. Prac. & Rem. Code Ann. § 52.007. See also Tex. R. App. P. 24.4.

**Page 702**

**Note (12) renumber as (14)**

**Page 709**

**10.04**

**First paragraph**

“Tex. R. Civ. P. 26.1.” should be “Tex. R. App. P. 26.1.”

**Page 726**

**10.05**

**[B][2] Clerks Record**

**First paragraph under heading [2] Clerk’s Record:**

Delete “and” before (10) and replace with “;”

**Add after “after payments made”:**

“and (11) any supersedeas bond or certificate of cash deposit in lieu of a bond.”

**Page 727**

**10.05**

**[B][2] Clerks Record**

**Renumber [B][3] to [B][4]**

**Add as New [B][3]:**

*[3] Appendix in Lieu of Clerk’s Record*

An appellant may file in lieu of the Clerk’s Record an Appendix containing the same content as required for the Clerk’s Record and any other item in the record that is referenced in the appellant’s brief. Tex. R. App. P. 34.5a. Any other party may file a supplemental appendix with that party’s brief. Alternatively, the parties may agree to file a joint appendix. A court clerk may not assess a fee if a party files an appendix as provided by Rule 34.5a.