NEW APPELLATE RULES FOR CPS CASES

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State Bar of Texas
38TH ANNUAL ADVANCED FAMILY LAW COURSE
August 6-9, 2012
Houston

CHAPTER 57

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LAW RELATED PUBLICATIONS:

Author/Speaker for 2011 Annual Advanced Family Law Course – San Antonio, Ch. 47, "2011 Legislative Update of Child Abuse & Neglect Legislation"
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Author/Speaker for 2010 Annual Advanced Family Law Course – San Antonio, Ch. 60, "What Do You Do With a 263.405 Hearing?"
Author for 2010 Annual Advanced Family Law Couse – San Antonio Ch. 52, "Jury Charge: Beyond the Boilerplate"
Author/Speaker for 2009 Annual Advanced Family Law Course – Dallas Ch. 61, "2009 Legislative Update of Child Abuse & Neglect Legislation"
Author/Speaker for 2008 Annual Advanced Family Law Conference – San Antonio Ch. 51.4, "Drugs/Alcohol Abuse as Proof of Endangerment in Support of Parental Termination
Author/Speaker, for 2007 Annual Advanced Family Law Conference – San Antonio, Ch. 52.7, "2007 Legislative Update of Laws Affecting Child Protection & Litigation by Department of Family & Protective Services," August 6-9, 2007.
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Author/Speaker for 18th Annual Juvenile Law Conference Professor Robert O. Dawson Juvenile Law Institute, "Ethics: Ineffective Assistance of Counsel in CPS Cases," Austin, Renaissance Hotel, February 1-3, 2005

Author/Speaker for Advanced Family Law Course 2004 – San Antonio – Ch. 58 "Ineffective Assistance of Counsel in CPS Cases," Aug. 9-12,2004

Author/Speaker for 2004 Crimes Against Kids Conference by TDCAA, "Jury Charges in Parental Termination Cases," San Antonio, Texas, May 10-14, 2004

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Author/Speaker for 2003 Annual Criminal & Civil Law Update of Texas District & County Attorneys Association, "TDFPS Case Law and Legislative Update" Corpus Christi, Texas, September 24-26, 2003

Author/Speaker for State Bar of Texas 2003 Annual Meeting; Domestic Violence & Child Abuse Important Legal Issues, "Legislative Update" Houston, 6/13/03.

Author/Speaker for Workshop at Advanced Family Law Institute in Dallas (August 5-8, 2002): "Termination and Adoption: It Ain't Over 'Til It's Over"

Author/Speaker for Texas Children's Justice Act Project, TDPRS, The Prosecution of Child Abuse Cases 2002: A Workshop for Child Abuse Professionals "Ethical Considerations in Representation of Texas Department of Protective & Regulatory Services in Child Protection Cases," Austin, Texas, July 25-26, 2002.

Author/Speaker for Juvenile Law Section of Houston Bar Association (2/19/02): "Procedures for Appeals of Suits Involving Termination of Parental Rights"

Author/Speaker for Texas Children's Justice Act Project (July 12-13 2001) A Workshop for Child Abuse Professionals: "Appellate Defense of Court's Finding that Termination is in the Best Interest of the Child."

Author/Speaker for Texas District and County Attorney's Association (April 28-29, 1999) Annual Civil Law Seminar: "Interlocutory Appeals of Governmental Interests: 'Shake, Rattle & Roll.'"

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Organizations and Committees:

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Chair, Appellate Practice & Advocacy Section, State Bar of Texas (1996-97)
Chair, Continuing Legal Education Committee, State Bar of Texas (2000-02)
Vice-Chair, Continuing Legal Education Committee, State Bar of Texas (2002-03)
Member, Supreme Court Advisory Committee on Rules of Civil Procedure (1994-present);
Chair, Subcommittee on Rules 16-165a
Member, Pattern Jury Charge Committee (Family Law), State Bar of Texas (1987-2000)
Supreme Court Liaison, Texas Judicial Committee on Information Technology (2001-present)
Tx. Bd. of Legal Specialization, Civil Appellate Law Advisory Commission (Member and Civil Appellate Law Exam Committee (1990-2006; Chair 1991-1995); Family Law Advisory Commission (1987-1993)
Member, Supreme Court Task Force on Jury Charges (1992-93)
Member, Supreme Court Advisory Committee on Child Support and Visitation Guidelines (1989, 1991; Co-Chair 1992-93; Chair 1994-98)
Member, Board of Directors, Texas Legal Resource Center on Child Abuse & Neglect, Inc. (1991-93)
President, Texas Academy of Family Law Specialists (1990-91)
President, San Antonio Family Lawyers Association (1989-90)
Associate, American Board of Trial Advocates
Fellow, American Academy of Matrimonial Lawyers
Director, San Antonio Bar Association (1997-1998)
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Professional Activities and Honors:

One of Texas' Top Ten Lawyers in all fields, *Texas Monthly* Super Lawyers Survey (2010 - 3rd Top Point Getter)
Listed as one of Texas' Top Ten Lawyers in all fields, *Texas Monthly* Super Lawyers Survey (2009)
Recipient of the Franklin Jones, Jr. CLE Article Award for Outstanding Achievement in CLE (2009)
Listed as Texas' Top Family Lawyer, Texas Lawyer's *Go-To-Guide* (2007)
Listed as one of Texas' Top 100 Lawyers, and Top 50 Lawyers in South Texas, *Texas Monthly* Super Lawyers Survey(2003-2010)
Texas Academy of Family Law Specialists' *Sam Emison Award* (2003)
State Bar of Texas *Presidential Citation* "for innovative leadership and relentless pursuit of excellence for continuing legal education" (June, 2001)
State Bar of Texas Family Law Section's *Dan R. Price Award* for outstanding contributions to family law (2001)
State Bar of Texas *Gene Cavin Award for Excellence in Continuing Legal Education* (1996)
State Bar of Texas *Certificate of Merit*, June 1995, June 1996, June 1997 & June 2004
Listed in the BEST LAWYERS IN AMERICA: Family Law (1987-2011); Appellate Law (2007-2011)

Continuing Legal Education and Administration:

Course Director, State Bar of Texas:
- Practice Before the Supreme Court of Texas Course (2002 - 2005, 2007, 2009 & 2011)
- *Enron, The Legal Issues* (Co-director, March, 2002) [Won national ACLEA Award]
- Advanced Expert Witness Course (2001, 2002, 2003, 2004)

- 1999 Impact of the New Rules of Discovery
- 1998 Advanced Civil Appellate Practice Course
- 1991 Advanced Evidence and Discovery
- Computer Workshop at Advanced Family Law (1990-94) and Advanced Civil Trial (1990-91) courses
- 1987 Advanced Family Law Course. Course Director, Texas Academy of Family Law Specialists First Annual Trial Institute, Las Vegas, Nevada (1987)

Books and Journal Articles:

—Editor-in-Chief of the State Bar of Texas' TEXAS SUPREME COURT PRACTICE MANUAL (2005)
—Chief Editor of the State Bar of Texas Family Law Section's EXPERT WITNESS MANUAL (Vols. II & III) (1999)
— Author of Vol. 6 of McDonald Texas Civil Practice, on Texas Civil Appellate Practice, published by Bancroft-Whitney Co. (1992) (900 + pages)
—*A Guide to Proceedings Under the Texas Parent Notification Statute and Rules,* SOUTH TEXAS LAW REVIEW (2000) (co-authored)
—*Obligations of the Trial Lawyer Under Texas Law Toward the Client Relating to an Appeal,* 41 SOUTH TEXAS LAW REVIEW 111 (1999)
—*Asserting Claims for Intentionally or Recklessly Causing Severe Emotional Distress, in Connection With a Divorce*, 25 ST. MARY'S L.J. 1253 (1994), republished in the AMERICAN JOURNAL OF FAMILY LAW (Fall 1994) and Texas Family Law Service *NewsAlert* (Oct. & Dec., 1994 and Feb., 1995)
—Chapter 21 on *Business Interests* in Bancroft-Whitney's TEXAS FAMILY LAW SERVICE (Speer's 6th ed.)
—*Characterization of Marital Property*, 39 BAY. L. REV. 909 (1988) (co-authored)
—*Fitting a Round Peg Into A Square Hole: Section 3.63, Texas Family Code, and the Marriage That Crosses States Lines*, 13 ST. MARY'S L.J. 477 (1982)

SELECTED CLE SPEECHES AND ARTICLES

State Bar of Texas' [SBOT] **Advanced Family Law Course**: Intra and Inter Family Transactions (1983); Handling the Appeal: Procedures and Pitfalls (1984); Methods and Tools of Discovery (1985); Characterization and Reimbursement (1986); Trusts and Family Law (1986); The Family Law Case in the Appellate Court (1987); Post-Divorce Division of Property (1988); Marital Agreements: Enforcement and Defense (1989); Marital Liabilities (1990); Rules of Procedure (1991); Valuation Overview (1992); Deposition Use in Trial: Cassette Tapes, Video, Audio, Reading and Editing (1993); The Great Debate: Dividing Goodwill on Divorce (1994); Characterization (1995); Ordinary Reimbursement and Creative Theories of Reimbursement (1996); Qualifying and Rejecting Expert Witnesses (1997); New Developments in Civil Procedure and Evidence (1998); The Expert Witness Manual (1999); Reimbursement in the 21st Century (2000); Personal Goodwill vs. Commercial Goodwill: A Case Study (2000); What Representing the Judge or Contributing to Her Campaign Can Mean to Your Client: Proposed New Disqualification and Recusal Rules (2001); Tax Workshop: The Fundamentals (2001); Blue Sky or Book Value? Complex Issues in Business Valuation (2001); Private Justice: Arbitration as an Alternative to the Courthouse (2002); International & Cross Border Issues (2002); Premarital and Marital Agreements: Representing the Non-Monied Spouse (2003); *Those Other Texas Codes: Things the Family Lawyer Needs to Know About Codifications Outside the Family Code* (2004); Pearls of Wisdom From Thirty Years of Practicing Family Law (2005); The Road Ahead: Long-Term Financial Planning in Connection With Divorce (2006); A New Approach to Distinguishing Enterprise Goodwill From Personal Goodwill (2007); The Law of Interpreting Contracts: How to Draft Contracts to Avoid or Win Litigation (2008); Effect of Choice of Entities: How Organizational Law, Accounting, and Tax Law for Entities Affect Marital Property Law (2008); Practicing Family Law in a Depressed Economy, Parts I & II (2009); Property Puzzles: 30 Characterization Rules, Explanations & Examples (2009); Troubling Issues of Characterization, Reimbursement, Valuation, and Division Upon Divorce (2010); Separate & Community Property: 30 Rules With Explanations & Examples (2010); The Role of Reasoning in Constructing a Persuasive Argument (2011)

UT School of Law: Trusts in Texas Law: What Are the Community Rights in Separately Created Trusts? (1985); Partnerships and Family Law (1986); Proving Up Separate and Community Property Claims Through Tracing (1987); Appealing Non-Jury Cases in State Court (1991); The New (Proposed) Texas Rules of Appellate Procedure (1995); The Effective Motion for Rehearing (1996); Intellectual Property (1997); Preservation of Error Update (1997); TRAPs Under the New T.R.A.P. (1998); Judicial Perspectives on Appellate Practice (2000)

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SBOT's **Advanced Civil Appellate Practice Course**: Handling the Appeal from a Bench Trial in a Civil Case (1989); Appeal of Non-Jury Trials (1990); Successful Challenges to Legal/Factual Sufficiency (1991); In the Sup. Ct.: Reversing the Court of Appeals (1992); Brief Writing: Creatively Crafting for the Reader (1993); Interlocutory and Accelerated Appeals (1994); Non-Jury Appeals (1995); Technology and the Courtroom of the Future (1996); Are Non-Jury Trials Ever "Appealing"? (1998); Enforcing the Judgment, Including While on Appeal (1998); Judges vs. Juries: A Debate (2000); Appellate Squares (2000); Texas Supreme Court Trends (2002); New Appellate Rules and New Trial Rules (2003); *Supreme Court Trends* (2004); Recent Developments in the *Daubert* Swamp (2005); Hot Topics in Litigation: Restitution/Unjust Enrichment (2006); The Law of Interpreting Contracts (2007); Judicial Review of Arbitration Rulings: Problems and Possible Alternatives (2008); The Role of Reasoning and Persuasion in the Legal Process (2010)

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SBOT New Frontiers in Marital Property: Busting Trusts Upon Divorce (2003); American Academy of Psychiatry and the Law: Daubert, Kumho Tire and the Forensic Child Expert (2003); AICPA-AAML National Conference on Divorce: Cutting Edge Issues–New Alimony Theories; Measuring Personal Goodwill (2006); New Frontiers` - Distinguishing Enterprise Goodwill from Personal Goodwill; Judicial Conference (2006); SBOT New Frontiers in Marital Property Law: Tracing, Reimbursement and Economic Contribution Claims In Brokerage Accounts (2007); SBOT In-House Counsel Course: When an Officer Divorces: How a Company can be Affected by an Officer's Divorce (2009); SBOT Handling Your First Civil Appeal The Role of Reasoning and Persuasion in Appeals (2011); New Frontiers in Marital Property Law: A New Approach to Determining Enterprise and Personal Goodwill Upon Divorce (2011); SBOT Handling Your First Appeal: The Role of Reasoning and Persuasion in the Legal Argumentation (2012) AICPA-AAML National Conference on Divorce: Business Valuation Upon Divorce: How Theory and Practice Can Lead to Problems In Court (2012)

Table of Contents

New Appellate Rules for CPS Cases

Abstract: This paper discusses the new rules of procedure enacted by the Supreme Court of Texas in 2012 to accelerate post-judgment procedures in child protection suits, in response to House Bill 906.

I. INTRODUCTION

In 1997, Subchapter E of chapter 263 of the Family Code was added to the Family Code to address child protection suits[1] in which a court ordered a child into the care of the Department of Family & Protective Services ("CPS case").[2] A primary goal in adding this Subchapter was to ensure a swift and more certain time for resolution of these cases.[3] The first section in this subchapter, Section 263.401, required trial courts to either reach a final order in the case or have the families reunified within twelve months after the court ordered the child in the Department's care with only limited exceptions.[4] This requirement did speed up trial court dispositions of these suits, but it did not address post-judgment and appellate delays that followed after the trial court's decision.

As a consequence, a couple of legislation sessions later, the Legislature enacted Section 263.405 of the Family Code, a procedure to address "post-judgment appellate delays."[5] That procedure not only required appeals be accelerated but also required trial judges to make swift determinations regarding whether the proposed appeal was frivolous, whether a new trial should be granted, and indigence issues.[6] One legislative innovation was the requirement that appellant's state their appellate complaints in a writing filed with the trial court, within 15 days of the signing of judgment. That requirement was declared unconstitutional—as applied—by several courts of appeals.[7] Dissatisfied with this procedure, the Legislature repealed most of this scheme in 2011 and instead directed that the Texas Supreme Court come up with rules by March 1, 2012, "accelerating the disposition by the appellate court and the supreme court of an appeal of a final order granting termination of the parent-child relationship...."[8]

In August of 2011, the Supreme Court adopted its first amendments in response to the Legislature's mandate with changes to Rules 20.1 and 25.1 in the Texas Rules of Appellate Procedure.[9] A second round of changes followed, to Rule of Civil Procedure 306, and Texas Rules of Appellate Procedure 20, 25, 28, 32, and 35.[10] The Supreme Court also made changes to the Texas Rules of Judicial Administration. The purpose of this paper is to discuss the delays in the appellate process that these new rules attempt to address, and how the new rules may impact current post-judgment and appellate practice in CPS cases.

The rule amendment process was originally entrusted to a Texas Supreme Court Task Force. It was then referred to the Supreme Court Advisory Committee. Finally, the Supreme Court promulgated new rules. The development of the rule amendments can be tracked in the Report of the Supreme Court Task Force,[11] and in the discussion of the Texas Supreme

[1] In this paper, "child protection suit" refers to any suit "for termination of the parent-child relationship or suits affecting the parent-child relationship filed by a governmental entity for managing conservatorship," to be consistent with the definition provided in Texas Rule of Judicial Administration 6.2, as well as the type case subject to Section 263.405 of the Family Code. *See* Misc. Docket Order No. 12-0932, 75 Tex. Bar J. 310 (March 1, 2012) (Attached); Tex. Fam. Code Ann. §263.405 (Vernon 2008).

[2] Act of May 28, 1997, 75th Leg., R.S., ch. 603 §121997 Tex. Gen. Laws 2119, 2123 (adds Subchapter E). The title of this Subchapter is "Final Order for Child under Department Care."

[3] *In re Bishop*, 8 S.W.3d 412, 416 (Tex.App.–Waco,1999, original proceeding) (acknowledging subchapter E of Chapter 263 of the Family Code added to carry out recommendation that there be "concurrent planning with clearly defined responsibilities and deadlines for the birth parents and either termination of parental rights or reunification with the family within 12 months of removal.")

[4] Act of May 28, 1997, 75th Leg., R.S., ch. 603 §12, 1997 Tex. Gen. Laws 2119, 2123 (subsequently amended).

[5] *See* House Comm. On Juv. Justice & Family Issues, Bill Analysis, Substituted Committee Report by Goodman, Tex. H.B. 2249, 77th Leg., R.S. (2001); Act of May 24, 2001, H.B. 2249 §9, ch. 1090 §9, 2001 Tex. Gen. Laws 2395, 2397 [hereinafter "Act of May 24, 2011. HB 2249"].

[6] Act of May 24, 2011, HB 2249 §9.

[7] *See* Linda Thomas & Ardita L. Vick, *Family Law: Parent and Child*, 60 SMU L. REV. 1053, 1075-78 (2007).

[8] Act of May 5, 2011, 82d Leg., H.B. 906, R.S., ch. 75 §4-5. 2011 Tex. Gen. Laws 348, 349 [Hereinafter "Act of May 5, 2011, HB 906]". The Act provides: "A final order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose." Act of May 5, 2011, 82d Leg., R.S., ch. 75, § 5, 2011 Tex. Gen. Laws 348, 349.

[9] Order Adopting Amended Texas Rules of Appellate Procedure 20.1 and 25.1, Misc. Docket No. 11-9169, 74 Tex. B. J. 846 (October 2011) [hereinafter "Order 11-9169"]. *See Appendix.*

[10] Final Approval of Amendments to Texas Rule of Civil Procedure 306, Texas Rules of Appellate Procedure 20, 25, 28, 32 and 35, Misc. Docket No. 12-9030, 75 Tex. Bar J. 228 (March 2012) [hereinafter "Order No. 12-9030"]. *See Appendix.*

[11] http://jwclientservices.jw.com/sites/scac/Document%20Library2/1/SCAC%20-%20HB%20906%20-%20Final%20Report%20of%20the%20Task%20Force%20for%20Post-Trial%20Rules.pdf

Court Advisory Committee.[12] The Order promulgating the rule changes is also available on the internet.[13]

II. RULE 306, AS AMENDED, REQUIRES SPECIFIC GROUNDS IN SUPPORT OF THE JUDGMENT TO BE INCLUDED IN THE JUDGMENT ON A CHILD PROTECTION SUIT.

A. The Problem addressed in Rule 306, as amended, is the delay that the lengthy Findings of Fact process has on an accelerated appeal

The Department files child protection suits under its authority and duty of initiating actions for the protection of children under the Family Code.[14] As such, these suits, like other suits under the Family Code, are subject to the Rules of Civil Procedure.[15] One process under the Rules of Civil Procedure that can compromise the ability to accelerate these type cases after judgment involves requesting and issuing findings of fact and conclusions of law.

Findings of fact and conclusions of law serve the same function as jury answers from a jury trial.[16] In particular, they resolve the controlling factual disputes and narrow the applicable claims and defenses in support of the court's decision thereby reducing the number of contentions an appellant must raise on appeal.[17] Without them, an appellate court will consider the trial court's judgment to imply any and all findings of fact necessary to support it.[18] That does not mean the findings are conclusive if a reporter's record is filed in the appeal. However, it does mean a party would have to review and analyze the record from the trial to determine all the findings necessarily implied on that record to bring proper sufficiency of the evidence and abuse of discretion challenges to the court's decision.[19] Accordingly, findings and fact and conclusions of law narrow the appeal to the bases that the trial judge actually determined supported the judgment rather than what the judge could have determined based on the record.

One problem in utilizing the normal findings of fact procedure in an accelerated appeal from a child protection suit, however, is the length of time that the findings process can take. The full timetable stretches to 80 days. Under Texas Rule of Procedure, a request for findings of fact and conclusions of law by any party can be filed as late as 20 days after the judgment is signed.[20] The trial court has up to 20 more days to issue findings and conclusions.[21] If the Court fails to timely issue findings of fact and conclusions within 10 days, any party has 10 more days to file a reminder and the trial court has 10 days after the reminder to issue findings of conclusions.[22] Once findings and conclusions are issued, any party has 10 more days to request amended or as additional findings, which the court must file 10 days after that.[23] Because the Legislature mandates judgments in child protection suits to be accelerated, that means that findings of fact could be filed after briefs are due.[24]

[12] http://jwclientservices.jw.com/sites/scac/Document%20Library2/1/SCAC%20-%20Transcript%20of%208-27-11%20meeting.pdf (pp. 22118-22182); http://jwclientservices.jw.com/sites/scac/Document%20Library2/1/SCAC%20-%20Transcript%20of%2010-22-11%20meeting.pdf (pp. 22944-23000).

[13] Final Approval of Amendments to Texas Rules of Judicial Administration 6, Misc. Docket No. 12-9032, 75 Tex. Bar J. 310 (March 2012) [hereinafter "Order No. 12-9032"]. *See Appendix*. *See* http://www.supreme.courts.state.tx.us/MiscDocket/12/12903000.pdf

[14] Tex. Fam. Code Ann. 102.003(a)(5) and (6) (Vernon 2008) (Government entities and authorized agencies are granted standing to file suits affecting the parent-child relationship under the Family Code); Tex. Fam. Code Ann. §264.002 (Vernon 2008) (The Department is specifically charged with the duty to promote the enforcement of laws for the protection of abused and neglected children and to take the initiative in all matters involving the interests of children where adequate provision has not already been made); Tex. Fam. Code Ann. §262.001 (Vernon 2008) (government entity with interest in child may file a suit affecting the parent-child relationship that includes a request to take possession of a child without a court order as provided in Chapter 262); *See also* Tex. Hum. Res. Code §40.002(b) (Vernon 2005) (Department to provide protective services for children)

[15] *In re B.L.D.*, 113 S.W.3d 340, 351 (Tex. 2003) (held rules of civil procedure applied to Department's suit which included claim for parental termination); *In re J.F.C.*, 96 S.W.3d 256, 265-66 (Tex. 2002) (applied Texas Rule of Civil Procedure 279 to find best interest element deemed found in favor of jury's verdict for parental termination even though no express finding was made by the jury in the charge); *see also* TEX. FAM. CODE ANN. §104.001 (Vernon 2002) (clarified rules of evidence apply as in other civil cases

[16] *Amador v. Berrospe*, 961 S.W.2d 205, 207 (Tex. App. Houston [1st Dist.] 1996, writ denied); O'Connor's Texas Rules-Civil Trials (2011) at p. 747.

[17] *Larry F. Smith, Inc. v. The Weber Co., Inc.*, 110 S.W.3d 611, 614 (Tex. App.-Dallas 2003, pet. denied) (citing 6 McDonald & Carlson, Texas Civil Practice 2d § 18:3 (1998)).

[18] *Pharo v. Chambers County*, 922 S.W.2d 945, 948 (Tex.1996).

[19] *See BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex.2002).

[20] *See* Tex. R. Civ. P. 296.

[21] Tex. R. Civ. P. 297.

[22] Tex. R. Civ. P. 297.

[23] Tex. R. Civ. P. 298.

[24] Tex. Fam. Code Ann. §263.405(a) (Vernon Supp. 2011) (requires acceleration of judgments in child protection suits); Tex. R. App. P. 26.1(b) (in accelerated appeals, notice of

The amendment to Rule 306, shortens the normal timetable for findings of fact and conclusions of law by eliminating the 20-day period for the trial court to issue finding and conclusions.

> The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship. the judgment must state the specific grounds for termination or for appointment of the managing conservator[25]

The amendment requires that the "specific grounds" for "termination" or "for appointment of the managing conservator" to be stated in a judgment issued in a suit filed by a government entity for parental termination or managing conservatorship. What constitute "specific grounds" for parental termination or managing conservatorship is not defined in this Rule. Nevertheless, opinions by the Supreme Court involving child protection suits confirm that the court uses the term "grounds" to refer to the specific statutory basis supporting the court's decision for parental termination under Section 161.001(1) of the Family Code as well as the specific statutory basis supporting the decision for managing conservatorship.[26] Also, Texas Rule of Civil Procedure 299 uses the word "grounds" in a way that appears consistent with that use. And this interpretation was assumed by the Task Force and the Supreme Court Advisory Committee in their deliberations. Therefore, the terms "specific grounds" in the context of judgment in a child protection suit should be taken to refer to the specific statutory bases for parental termination or managing conservatorship.

Rule 299 should be applied in such a way that the grounds, stated in the judgment as the bases for granting parental termination or managing conservatorship, operate just as findings of fact under the general procedure. Rule 299 states as follows:

> When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.[27]

Rule 299 provides that the findings of fact filed by the trial court shall form the basis of recovery or defenses on appeal. Rule 299 does not limit is application to findings of fact that are requested under the procedures of Rules 296-298. Therefore, the "specific grounds" recited in the judgment under newly-amended Rule 306 constitute the controlling findings of fact that Rule 299 will treat as the sole bases for the judgment.

B. The procedure for ensuring the correct grounds in support of judgment are issued will need to focus on the procedures for a correct judgment.

With this change to Rule 306, litigants will need to take a different approach in ensuring that proper findings are made for purposes of appealing a non-jury judgment. Because the judgment is the locus of the court's findings for appeal, a litigant will need to ensure that the written judgment reflects the correct grounds for the trial court's decision. In this connection, there is a good chance a trial judge deciding a child protection suit will announce the "specific grounds" for granting parental termination at the time of oral rendition since the most common bases used for parental termination indicates the trial court must "find" the specific statutory grounds set forth in that section to order parental termination.[28]

appeal must be filed within 20 days after judgment signed); Tex. R. App. P. 35.1(b) (record due 10 days after notice of appeal is filed); (Tex. R. Civ. P. 38.6 (appellant's brief due 20 days after record is filed); Tex. R. App. P. 38.6(b) (appellee's brief is due 20 days after appellant's brief is filed).

[25] Order No. 12-9039. The new language is underlined.

[26] *In re J.O.A.*, 283 S.W.3d 336, 345 (Tex. 2009) (noted that the "grounds" in support of the trial court's judgment for parental termination were Subparts D and E of Section 161.001(1) which involve findings that the parent (1) knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional wellbeing of the children; and (2) engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children); *In re J.A.J.* 243 S.W.3d 611, 615 (Tex. 2007) (acknowledging that the Department pled for conservatorship on alternate "grounds," pursuant to sections 153.005 and 153.131and 263.404 of the Family Code).

[27] Tex. R. Civ. P. 299.

[28] Tex. Fam. Code Ann. §161.001 (Vernon 2008); *Note*: One of the commons grounds for terminating an alleged father does

Therefore, it should be fairly easy for the parties to know, at least in that circumstance, what specific grounds will need to be written in the judgment for parental termination. However, if a party does not believe the written judgment accurately reflects the specific grounds found by the trial court for parental termination and managing conservatorship, timely action will need to be taken if such party wants to correct that.

The recommended action, for requesting changes in findings contained in the trial court judgment, would be to file a Motion to Modify, Correct, or Reform the Judgment.[29] A motion to modify must be filed within 30 days of the date the judgment is signed, and the motion extends the trial court's plenary power just like a motion for new trial.[30] Unlike the findings of fact process, filing a motion to modify on a specific ground does not entail a requirement that the trial court rule quickly. Once a motion to modify is timely filed, a trial judge can wait as long as 75 days after the judgment is signed before acting. If not granted, the motion will be considered overruled by operation of law on the 75th day.[31] Also, if a trial court determines the motion to modify should be granted, and issues a new judgment that makes any change, whether or not material or substantial, that will restart the appellate timetable again.[32]

Considering that the timetable in the motion to modify process can be two-and-a-half months, the amendment to Rule 306 could in some cases result in findings being changed after the appellant's brief is due. One way a trial judge may be able to assist in preventing unnecessary delays is by always announcing the specific grounds the court finds for parental termination and managing conservatorship at the time of rendition and directing that those grounds will appear in the judgment in conformity with Rule 306. Also, if a motion to modify is filed in this circumstance, the trial judge could make it a practice to consider the motion promptly.

III. POST-JUDGMENT HEARINGS

A. A New Trial Hearing is Not Required and Regular Civil Procedure on Motions for New Trial is not Modified under the New Rules.

The prior statutory acceleration scheme in child protection suits required that motions for new trial be filed 15 days after the appealable order was signed and also required that the trial court hold a hearing to determine whether a new trial should be granted within 30 days after the judgment.[33] The Supreme Court did not reestablish that procedure in any way in its new rules. Accordingly, in child protection suits, a motion for new trial, as in regular appeals, may be filed within 30 days of the date the judgment is signed.[34] The motion for new trial also does not have to be ruled upon within an accelerated time and can remain on the trial court's docket for 75 days, until overruled by operation of law.[35] The motion for new trial itself will not interfere with the accelerated appeal since the motion would not affect the time period for filing the notice of appeal in an accelerated appeal.[36] However, if the new trial is granted, that will moot the appeal.[37]

B. No Hearing Required under Section 13.003 of the Civil Practice & Remedies Code:

not suggest a finding requirement, since it does not include the same language. Tex. Fam. Code Ann. §161.002 (Vernon 2008).

[29]Tex. R. Civ. P. 329b.

[30] *Id.*

[31] *Id.* at 329b(f).

[32]*Check v. Mitchell*, 758 S.W.2d 755, 756 (Tex.1988) ("any change, whether or not material or substantial, made in a judgment while the trial court retains plenary power" will restart the appellate timetable from the date the modified judgment is signed).

[33] Act of May 5, 2011, HB 906 §4 & 8. The prior law stated:

> (b) Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or appeal the order must file with the trial court:
>
> (1) a request for a new trial; or
>
> (2) if an appeal is sought, a statement of point or points on which the party intends to appeal.
>
> …
>
> (d) The trial court shall hold a hearing not later than the 30th day after the date the final order is signed to determine whether:
>
> (1) a new trial should be granted;
>
> (2) a party's claim of indigence, if any, should be sustained; and
>
> (3) the appeal is frivolous as provided by Section 13.003(b), Civil Practice & Remedies Code.

Act of May 22, 2001, 77th Leg., ch. 1090, §9, 2001 Tex. Gen. Law 2395, 2397, *amended by* Act of 2007, 80th Leg., ch. 526 §2, *amended* by Act of May 5, 2011, HB 906 §4.

[34]Tex. R. Civ. P. 329b.

[35]Tex. R. Civ. P. 329b.

[36] Tex. R. App. P. 28.1(b); *In re K.A.F.*, 160 S.W.3d 923, 928 (Tex. 2005) (deadlines for filing notice of appeal in accelerated appeal is 20 days after the appealable order/judgment and post judgment motions mentioned in Tex. R. App. P. 26.1do not extend that time)

[37]*Galvan v. Harris County* , No. 01-09-00884-CV, 2011 WL 345677, 1 (Tex. App.-Houston [1st Dist.] 2011, no pet.) (mem. op.) ("The granting of a motion for new trial restores the case to its position before the former trial. *See Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex.2005). The appeal is rendered moot by the order granting a new trial.").

Another procedure eliminated during the 2011 session was the requirement that the court hold a hearing to determine whether an appeal is frivolous under Section 13.003 of the Civil Practice & Remedies Code within 30 days of the judgment.[38] While the Legislature eliminated the requirement to have a frivolous appeal hearing within 30 days of the judgment, the Legislature did not repeal Section 13.003 of the Civil Practice & Remedies Code which independently requires a determination that an appeal is not frivolous to allow a party to have a free record on the basis of indigence.[39]

In the New Rules, the Supreme Court did not enact a different procedure addressing Section 13.003 of the Civil Practice & Remedies Code. Instead, the Supreme Court invoked its authority under Tex. Gov't Code § 22.004 to modify the application of this section with the following language:

> (3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.[40]

Accordingly, there is no necessity to obtain a ruling on the merits of an appeal during a post-judgment hearing. If a party has a complaint about the frivolous nature of an appeal, a motion can be filed in the appellate court, as in other appeals, which permits the court to award just damages as a sanction.[41]

> C. No Indigence Hearing Required Unless a Challenge to Indigence is Being Asserted under the New Standards.

Section 263.405 of the Family Code previously required determination of an appealing party's indigence be done at a hearing held within 30 days of the judgment.[42] The Legislature eliminated the requirement of an indigence hearing within 30 days after judgment, and instead eliminated the necessity for this determination post-judgment by adding subpart (e) to Section 107.013 of the Family Code as follows:

> (e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration of the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.[43]

Because the section this subpart amends, Section 107.013 of the Family Code, pertains to the appointment of counsel for an indigent parent, this provision clarifies that an affidavit of indigence is not required to prove indigence again for purposes of continuing the appointment of counsel for an indigent parent on appeal. Moreover, Section 107.016 of the Family Code reaffirms that and also clarifies that the attorney appointed at trial will continue as the parent's appointed counsel unless certain condtions exist to relieve the attorney of that duty.[44] Therefore, once an attorney has been appointed for a parent on the basis of indigence, the attorney will continue to represent such parent without the necessity of a post-judgment hearing, as under the prior law, unless a motion is filed as provided uner Section 107.013(e). By ensuring the appointed attorney continues without reestablishing indigence post-judgment, this eliminates a hearing that could delay the appellate process, since the duty of the clerk and record to prepare an accelerated record in this case would not be triggered until payment of their fee or determination of indigence is established.[45]

Nonetheless, the Legislature did not eliminate the necessity for a determination of indigence as broadly as probably intended. While the changes in Section 107.013 of the Family Code would ensure continuation of an appointed attorney, it would not automatically entitle the indigent parent to proceed on

[38] Act of May 5, 2011, HB 906 §4 & 8.

[39]Tex. Civ. Prac. & Rem. Code Ann. §13.003 (Vernon 2002).

[40]Order No. 12-9030 (added Tex. R. App. P. 28.4(b)(3))

[41] Tex. R. App. P. 45.

[42] *Supra*, n. 31.

[43]Tex. Fam. Code Ann. §107.013(e) (Vernon Supp. 2011).

[44]Tex. Fam. Code Ann. §107.016(2) (Vernon Supp. 2011) provides:

…(2) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

(A) the date the suit affecting the parent-child relationship is dismissed;

(B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or

(C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

[45]Tex. R. App. P. 35.3(a) (clerk's responsibility to file the record is triggered only if a notice of appeal is filed and the party responsible for paying pays the fee, makes satisfactory arrangements or is entitled to appeal without paying the fee); Tex. R. App. P. 35.3(b) (reporter's duty is contingent on same matters as for clerk once appellant requests the record be prepared).

appeal without advancing appellate court costs, including the reporter's record, which can be quite costly. While it could be argued the Legislature intended this change in Chapter 107 to apply to indigence determinations for all purposes, this argument is difficult to make considering the changes only appear in sections that deal with the procedure for appointment of counsel in these cases. Accordingly, the filing of an affidavit of indigence with a possible indigence hearing (if contested) under the procedure of Texas Rule of Appellate Procedure 20 appeared to be necessary for an indigent parent who wishes to proceed without advance payment of appellate costs.

To ensure that the appellate record is prepared on an accelerated schedule without the delay of the procedure applicable for post-judgment indigence determinations under Rule 20, the Supreme Court amended Rule 20 to clarify that the determination of indigence under Section 107.013 would be enough. Specifically, a Subpart 3 was added to Rule 20.1(a) as follows:

> (3) By Presumption of Indigence. In a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested, a parent determined by the trial court to be indigent is presumed to remain indigent for the duration of the suit and any subsequent appeal, as provided by Section 107.013 of the Family Code and may proceed without advance payment of costs.[46]

Moreover, changes were also added to subparts c of Appellate Rule 10.2 to clarify that an affidavit of indigence is not required in order for an indigent parent with appointed counsel under Section 107.013 of the Family Code to proceed without advance payment of costs on appeal.

Importantly, to ensure applicability of this rule and to give the appellate court notice that this right is applicable, Tex. R. App. P. 25.1 was amended to require that the court of appeals be notified of indigent status in the notice of appeal. Namely, among the content requirements of a notice of appeal, the Supreme Court added that the appellant must "state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(1)(3)."[47] While this requirement seems to suggest the appellate court will have satisfactory notice of the applicability of Rule 20.1(1)(3) with the statement in the appeal, it may be prudent for the attorney to provide a copy of the order finding indigence at the trial court level, either with the notice of appeal or by separate filing.

IV. PRESERVATION OF ERROR

A. No Statement of Points Pre-requisite for Preservation of Issues on Appeal

In 2011, the Legislature eliminated the requirement in Section 263.405 of the Family Code that a statement of points be filed within 15 days of judgment in order to preserve points raised on appeal.[48] As noted above, several courts of appeals had ruled the requirement unconstitutional, as applied.[49] The New Rules adopted by the Supreme Court did not include a Statement of Points procedure. Accordingly, the Statement of Points procedure is no longer required for preserving complaint on appeal.

V. ACCELERATION PROCEDURES

A. The record must be filed with 10 days of the notice of appeal, and extensions may only be granted up to 10 days but no more than 30 days cumulatively.

The New Rules did not change the requirement that a notice of appeal in a child protection case be filed within 20 days of the judgment as in other accelerated appeals in civil cases.[50] However, it did make some adjustments from the prior scheme in Section 263.405 of the Family Code regarding the filing of the record and the ability to obtain extensions for more time.

Under the prior scheme of Section 263.405 of the Family Code, the appellate record could be filed as late as 60 days after the final order was signed.[51] When the Legislature repealed that provision in 2011, that left in place the Supreme Court's rule that required the record in an accelerated appeal to be filed within 10 days after the notice of appeal is filed.[52] The Supreme Court's new rules did not change that time deadline. However, it did make some adjustments to try and ensure this time frame would be met.

[46] Order No. 11-9169 (Tex. R. App. P. 20.1(1)(a)(3)).
[47] Tex. R. App. P. 25.1(d)(8).

[48] Repealed Act of May 5, 2011, H.B. 906 §5.
[49] *See* Linda Thomas & Ardita L. Vick, *Family Law: Parent and Child*, 60 SMU L. REV. 1053, 1075-78 (2007).
[50] Tex. R. App. P. 26.1(b)
[51] Act of May 22, 2001, 77th Leg., ch. 1090, §9, 2001 Tex. Gen. Law 2395, 2397, *amended by* Act of 2007, 80th Leg., ch. 526 §2, *repealed by* Act of May 5, 2011, HB 906 §5.
[52] Tex. R. App. P. 35.1(b).

First, the Court added language to Rule 28.4 to require the trial court to "direct the official or deputy reporter to immediately commence the preparation of the record" when its responsibility is triggered under rules 35.3(b) or (c) in these type appeals.[53] Moreover, it added in Rule 35.3(c) that an extension of time granted to a clerk or reporter for the late filing of a record "must not exceed … 10 days."[54] It also added in Rule 28.4 as follows:

> The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.[55]

Accordingly, even though an extension may be granted for 10 days on request of a reporter or clerk, this rule indicates only three requests of 10 days could be granted since the extension must not exceed 30 days "cumulatively."

Of course, that enforcement may be difficult to ensure if exhibits are lost, the reporter becomes sick, or unavailable for other reasons. Also, rule 35.3(c) goes on to state that the court must accept the filing of a late record when it is not the appellant's fault, and also adds the court can enter any order necessary to ensure the timely filing of the appellate record, which could conceivably accommodate special circumstances.

B. THE DOCKETING STATEMENT MUST ADVISE THE APPELLATE COURT THAT THE APPEAL IS A PARENTAL TERMINATION OR CHILD PROTECTION CASE AS DEFINED IN RULE 28.4.

The docketing statement is suppose to be for administrative purposes so that the appellate court's staff can know the basic information about the filing for proper treatment of the case.[56] Since the clerk's office is the first place that these appeals go, their notification regarding the accelerated nature of the case would be important for ensuring the appeal is treated accelerated. In this connection, Texas Rule of Appellate Procedure 32.1 does require that a docketing statement be filed promptly. The Supreme Court's New Rules now also add that there must be a statement in that docketing statement whether it is a parental termination or child protection case as defined in Rule 28.4.[57]

VI. NEW DEADLINES IN THE RULES OF JUDICIAL ADMINISTRATION

Probably the rule change by the Supreme Court that is going to have the greatest impact in acceleration of dispositions in child protection suits is in the Rules of Judicial Administration. At Rule 6.2 it adds the following:

> **Rule 6.2 Appeals in Certain Cases Involving the Parent-Child Relationship.**
>
> In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition in conformity with the following time standards:
> (a) **Courts of Appeals.** Within 180 days of the date the notice of appeal is filed.
> (b) **Supreme Court.** Within 180 days of the date the petition for review is filed.

As indicated, the rule not only requires a prompt disposition but sets specified dates within 180 days for both the dispositions by the courts of appeals and supreme court. These standards, by themselves, should trigger a more proactive approach by all the appellate courts to employ procedures that move these cases faster.

VII. ACCELERATION REQUIREMENT IF REMANDED

A final matter addressed by the New Rules is the timing of further action in the trial court if the appellate court orders the case remanded. Subpart (c) of the Supreme Court's New Rule on acceleration of these cases provides:

> If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.[58]

As indicated, the Supreme Court's Rule requires that the judgment of the appellate court contain language

[53] Tex. R. App. P. 28.4(b). placing the duty on the trial court to see that the record is timely filed was suggested by the Task Force (p.7) as a way to ensure that the trial judge was supportive of meeting this appellate deadline as against the court reporter's attending hearings and trials in other cases.
[54] Tex. R. App. P. 35.3(c).
[55] Tex. R. App. P. 28.4(b)(2).
[56] Tex. R. App. P. 32.4.
[57] Tex. R. App. P. 32.1(g).
[58] Tex. R. App. P. 28.4(c).

which would require a prompt trial no later than 180 days after the mandate. Importantly, it does not affirmatively require a trial within 180 days of the remand or state what happens if an appellate court's judgment fails to include this requirement. It, therefore, will be the responsibility of the litigants to ensure that this language is in the appellate court's judgment. Finally, if a trial does not occur within the required timeframe, the rule does not state what happens, however, a party may seek a motion to enforce the deadline for trial withan an an additional order from the appellate court that issued the judgment pursuant to Tex. R. App. P. 19.3(c).

-Appendix-

NEW RULES ADOPTED BY THE SUPREME COURT IN RESPONSE TO ACT OF MAY 5, 2011, HB 906 §6

1. Order Adopting Amended Texas Rules of Appellate Procedure 20.1 and 25.1, Misc. Docket No. 9169 (8/31/11), 74 Tex. Bar J. 846 (changes reflected by underlining and striking through):

*** * ***

Rule 20. When Party is Indigent
20.1. Civil Cases

(a) *Establishing Indigence.*

(1) By Certificate. If the appellant proceeded in the trial court without advance payment of costs pursuant to a certificate under Texas Rule of Civil Procedure 145(c) confirming that the appellant was screened for eligibility to receive free legal services under income guidelines used by a program funded by Interest on Lawyers Trust Accounts or the Texas Access to Justice Foundation, an additional certificate may be filed in the appellate court confirming that the appellant was rescreened after rendition of the trial court's judgment and again found eligible under program guidelines. A party's affidavit of inability accompanied by the certificate may not be contested.

(2) By Affidavit. A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(A) the party files an affidavit of indigence in compliance with this rule;

(B) the claim of indigence is not contestable, is not contested, or, if contested, the contest is not sustained by written order; and

(C) the party timely files a notice of appeal.

(3) By Presumption of Indigence. In a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested, a parent determined by the trial court to be indigent is presumed to remain indigent for the duration of the suit and any subsequent appeal, as provided by section 107.013 of the Family Code, and may proceed without advance payment of costs.

* * *

(c) *When and Where Affidavit Filed.*

(1) Appeals. An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Texas Rule of Civil Procedure 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3). An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(2) Other Proceedings. In any other appellate court proceeding, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), a petitioner must file the affidavit of indigence in the court in which the proceeding is filed, with or before the document seeking relief. A respondent who requests preparation of a record in connection with an appellate court proceeding must file an affidavit of indigence in the appellate court within 15 days after the date when the respondent requests preparation of the record, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3).

Rule 25. Perfecting Appeal
25.1. Civil Cases

* * *

(d) Contents of Notice. The notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;

(2) state the date of the judgment or order appealed from;

(3) state that the party desires to appeal;

(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;

(5) state the name of each party filing the notice;

(6) in an accelerated appeal, state that the appeal is accelerated; and

(7) in a restricted appeal:

(A) state that the appellant is a party affected by the trial court's judgment but did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of;

(B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and

(C) be verified by the appellant if the appellant does not have counsel.

(8) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

2. Final Approval of Amendments to Texas Rule of Civil Procedure 306, Texas Rules of Appellate Procedure 20, 25, 28, 32 and 35, Misc. Docket No. 12-9030 (2/13/12), 75 Tex. Bar J. 228 (changes reflected by underlining and striking through):

Amendment to Texas Rules of Civil Procedure:

Rule 306. Recitation of Judgment
The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship. the iudgment must state the specific grounds for termination or for appointment of the managing conservator.

Amendments to Texas Rules of Appellate Procedure:
Rule 20. When Party is Indigent

20.1 Civil Cases.
* * *

(e) Contest to ~~Affidavit~~ Indigence.

(1) If Affidavit Filed. The clerk, the court reporter, the court recorder, or any party may challenge an affidavit that is not accompanied by a TAJF certificate by filing – in the court in which the affidavit was filed – a contest to the affidavit. The contest must be filed on or before the date set by the clerk if the affidavit was filed in the appellate court, or within 10 days after the date when the affidavit was filed if the affidavit was filed in the trial court. The contest need not be sworn.

(2) If Indigence Presumed. The clerk, the court reporter, the court recorder, or any party may challenge a presumption of indigence that has been established as provided by Rule 20.1(a)(3) by filing a contest in the trial court. The contest must be filed within three days after a notice of appeal is filed. The contest must state specific facts demonstrating a good faith belief that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances. The contest need not be sworn.

…

(g) Burden of Proof.

(I) If Affidavit Filed. If a contest is filed, the party who filed the affidavit of indigence must prove the affidavit's allegations. If the indigent party is incarcerated at the time the hearing on a contest is held, the affidavit must be considered as evidence and is sufficient to meet the indigent party's burden to present evidence without the indigent party's attending the hearing.

(2) If Indigence Presumed. If a presumption of indigence has been established as provided by Rule 20.1(a)(3). the party filing the contest must prove that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances since the most recent determination of indigence.

…

(i) Hearing and Decision in the Trial Court.

(1) Notice Required. If the affidavit of indigence is filed in the trial court or a presumption of indigence has been established as provided by Rule 20. Ua'KT) and a contest is filed, or if the appellate court refers a contest to the trial court, the trial court must set a hearing and notify the parties and the appropriate court reporter of the setting.

(2) Time for Hearing. The trial court must either conduct a hearing or sign an order extending the time to conduct a hearing:

(A) within 10 days after the contest was filed, if initially filed in the trial court; or

(B) within 10 days after the trial court received a contest referred from the appellate court.

(3) Extension of Time for Hearing. The time for conducting a hearing on the contest must not be extended for more than 20 days from the date the order is signed.

(4) Time for Written Decision; Effect. Unless - within the period set for the hearing - the trial court signs an order sustaining the contest, the affidavit's allegations will be deemed true or the presumption of indigence will continue unabated, and the party will be allowed to proceed without advance payment of costs.

(j) Review of Trial Court's Decision.

(1) Motion. If the trial court sustains a contest, the party claiming indigence may seek review of the court's order by filing a motion challenging the order with the appellate court without advance payment of costs.

(2) Time for Filing; Extension. The motion must be filed within 10 days after the

order sustaining the contest is signed, or within 10 days after the notice of appeal is filed, whichever is later. The appellate court may extend the time for filing on motion complying with Rule 10.5(b).

(3) Record. Within three days after a motion is filed, the trial court clerk and court reporter, respectively, must prepare, certify, and file the clerk's record and reporter's record of the indigence hearing, if any, and the hearing on the contest. The record must be provided without advance payment of costs.

(4) Ruling by Operation of Law. If the appellate court does not deny the motion within 10 days after it is filed, the motion is granted by operation of law

(5) No Review of Order Overruling Contest. An order overruling a contest is not subject to appellate review.

(~~j~~k) *Record to be Prepared Without Prepayment.* If a party establishes indigence, the trial court clerk and the court reporter must prepare the appellate record without prepayment.

(~~k~~l)*Partial Payment ofCosts.* If the party can pay or give security for some of the costs, the court must order the party, in writing, to pay or give security, or both, to the extent of the party's ability. The court will allocate the payment among the officials to whom payment is due.

(~~l~~m) *Later Ability to Pay*. If a party who has proceeded in the appellate court without having to pay all the costs is later able to pay some or all of the costs, the appellate court may order the party to pay costs to the extent of the party's ability.

(~~m~~n) Costs Defined. As used in this rule, costs means:

(1) a filing fee relating to the case in which the affidavit of inability is filed; and

(2) the charges for preparing the appellate record in that case.

Rule 25. Perfecting Appeal

25.1. Civil Cases

* * *

(d) Contents of Notice. The notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;

(2) state the date of the judgment or order appealed from;

(3) state that the party desires to appeal;

(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;

(5) state the name of each party filing the notice;

(6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;

(7) in a restricted appeal:

(A) state that the appellant is a party affected by the trial court's judgment but did not participate - either in person or through counsel - in the hearing that resulted in the judgment complained of;

(B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and

(C) be verified by the appellant if the appellant does not have counsel.

(8) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

(e) Service of Notice, ~~Copy Filed With Appellate Court.~~ The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. ~~A copy of the notice of appeal must be filed with the appellate court clerk.~~

(f) Clerk's Duties. The trial court clerk must immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter or court reporters responsible for preparing the reporter's record.

(~~f~~g) *Amending the Notice*. An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.

(~~g~~h) *Enforcement of Judgment Not Suspended by Appeal*. The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless:

(1) the judgment is superseded in accordance with Rule 24, or

(2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.

* * *

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

* * *

28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(a) Application and Definitions.

(1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

(2) In Rule 28.4:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

(b) Appellate Record.

(1) Responsibility for Preparation of Reporter's Record. In addition to the responsibility imposed on the trial court in Rule 35.3(c). when the reporter's responsibility to prepare, certify and timely file the reporter s record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

(2) Extension of Time. The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.

(3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.

(c) Remand for New Trial. If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

Rule 32. Docketing Statement

32.1. Civil Cases

~~Upon perfecting the appeal~~ Promptly upon filing the notice of appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

* * *

(g) whether the appeal's submission should be given priority ~~or,~~ whether the appeal is an accelerated one under Rule 28 or another rule or statute, and whether it is a parental termination or child protection case, as defined in Rule 28.4;

* * *

Rules 35. Time to File Record; Responsibility for Filing Record

* * *

35.3. Responsibility for Filing Record

* * *

(c) Courts to Ensure Record Timely Filed. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court may extend the deadline to file the record if requested by the clerk or reporter. Each extension must not exceed 30 days in an ordinary or restricted appeal, or 10 days in an accelerated appeal. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

3. Final Approval of Amendments to Texas Rule of Judicial Administration 6, Misc. Docket Order No. 12-0932, 75 Tex. Bar J. 310 (March 1, 2012) (changes reflected by underlining and striking through):

Amendment to Texas Rules of Judicial Administration

Rule 6. Time Standards for the Disposition of Cases

Rule 6.1 District and Statutory County Courts

District and statutory county court judges of the county in which cases are filed should, so far as reasonably possible, ensure that all cases are brought to trial or final disposition in conformity with the following time standards:

~~a.~~(a) **Criminal Cases**. As provided by Article 32A.02, Code of Criminal Procedure.

~~b.~~(b) **Civil Cases Other Than Family Law**.

(1) *Civil Jury Cases*. Within 18 months from appearance date.

(2) *Civil Nonjury Cases*. Within 12 months from appearance date.

~~c.~~(c) **Family Law Cases.**

(1) *Contested Family Law Cases*. Within 6 months from appearance date or within 6 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

(2) *Uncontested Family Law Cases.* Within 3 months from appearance date or within 3 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.

~~d.~~(d) **Juvenile Cases.** In addition to the requirements of Title 3, Texas Family Code:

(1) *Detention Hearings*. On the next business day following admission to any detention facility.

(2) *Adjudicatory or Transfer (Waiver) Hearings*.

(a) Concerning a juvenile in a detention facility: Not later than 10 days following admission to such a facility, except for good cause shown of record.

(b) Concerning a juvenile not in a detention facility: Not later than 30 days following the filing of the petition, except for good cause shown of record.

(3) *Disposition Hearing*. Not later than 15 days following the adjudicatory hearing. The court may grant additional time in exceptional cases that require more complex evaluation.

(4) Nothing herein shall prevent a judge from recessing a juvenile hearing at any stage of the proceeding where the parties are agreeable or when in the opinion of the judge presiding in the case the best interests of the child and of society shall be served.

~~e.~~(e) **Complex Cases**. It is recognized that in especially complex cases or special circumstances it may not be possible to adhere to these standards.

Rule 6.2 Appeals in Certain Cases Involving the Parent-Child Relationship.

In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition in conformity with the following time standards:

(a) **Courts of Appeals.** Within 180 days of the date the notice of appeal is filed.

(b) **Supreme Court.** Within 180 days of the date the petition for review is filed.