

**PRESENTED AT**

34th Annual Conference on State and Federal Appeals

June 6-7, 2024

Austin, Texas

## **Update on Appellate Rules Changes**

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## TABLE OF CONTENTS

1.	Introduction . . . . .	1
2.	Local Rules . . . . .	1
3.	Withdrawal of Counsel . . . . .	1
4.	Supersedeas Bonds and Alternate Security . . . . .	2
	A. Rule 24.1(b)(2) . . . . .	2
	B. Rule 24.2 . . . . .	2
5.	Permissive Interlocutory Appeals. . . . .	3
	A. Rule 28.2 . . . . .	3
	B. Rule 28.3 . . . . .	4
6.	Docketing Statement . . . . .	5
7.	Clerk's Record . . . . .	5
	A. Supersedeas Bond . . . . .	5
	B. Appendix in Lieu of Clerk's Record. . . . .	6
8.	Form of Briefs . . . . .	7
	A. Identity of Parties and Counsel . . . . .	7
	B. Certificate of Service . . . . .	7
	C. Hard Copies. . . . .	8
9.	Oral Argument . . . . .	8
	A. Request for Argument . . . . .	8
	B. Notice of Argument . . . . .	9

10. Service of Orders . . . . .	9
A. Texas Rules of Civil Procedure . . . . .	9
B. TRAP 9.2 . . . . .	11
C. Findings of Fact and Conclusions of Law . . . . .	11
11. Petitions for Review . . . . .	11
12. Fifteenth Court of Appeals . . . . .	12

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## Appendix

A — Misc. Docket No. 22-9081 . . . . .	Tab A
B — Misc. Docket No. 23-9027 . . . . .	Tab B
C — Misc. Docket No. 23-9051 . . . . .	Tab C
D — Misc. Docket No. 23-9101 . . . . .	Tab D
E — Misc. Docket No. 23-9093 . . . . .	Tab E
F — Misc. Docket No. 23-9005 . . . . .	Tab F
G — Misc. Docket No. 23-9021 . . . . .	Tab G
H — Misc. Docket No. 24-9022 . . . . .	Tab H
I — Misc. Docket No. 22-9057 . . . . .	Tab I
J — Misc. Docket No. 24-001. . . . .	Tab J
K — Misc. Docket No. 22-9089 . . . . .	Tab K
L — Misc. Docket No. 23-9001 . . . . .	Tab L
M — Misc. Docket No. 23-9071 . . . . .	Tab M

N	—	Misc. Docket No. 24-004 . . . . .	Tab N
O	—	Misc. Docket No. 23-9029 . . . . .	Tab O

## **1. INTRODUCTION**

This paper covers amendments to the Texas Rules of Appellate Procedure in 2022, 2023, and the first half of 2024. It also addresses amendments to the Texas Rules of Civil Procedure that are of interest to appellate practitioners. The redlines of the affected rules are in the appendix to this paper.<sup>1</sup>

For an overview of the rules amendment process, see *How Texas Court Rules Are Made*, available at <https://www.txcourts.gov/media/1374851/How-Court-Rules-Are-Made.pdf>.

## **2. LOCAL RULES**

Rule 1.2 was amended concurrently with Texas Rule of Civil Procedure 3a, and Rule 10 of the Rules of Judicial Administration (all eff. January 1, 2023), to modify the process for promulgating local rules.<sup>2</sup> The amended rules remove the requirement that local rules must be approved by the Supreme Court. They also add a requirement that local rules cannot be inconsistent with other law or with rules adopted by the Supreme Court. The amended rules also require that local rules be published on the Office of Court Administration's website, to make it easier for all practitioners to access them. The rules also now address local forms in addition to local rules. Amended Rule 1.2 retains the requirement that an appeal cannot be dismissed for failure to follow a local rule unless the appellate court has first given the party notice of the noncompliance and an opportunity to cure it.

Amended Rule 10 of the Rules of Judicial Administration addresses local rules in justice courts and also gives regional presiding judges and justices of the Supreme Court the authority to direct changes to or the repeal of local rules.

## **3. WITHDRAWAL OF COUNSEL**

Rules 6.4 and 6.5 have been amended (eff. September 1, 2023) to clarify the difference between withdrawal of non-lead counsel and the withdrawal of lead

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<sup>1</sup> The paper does not address amendments to Rules 25.1(d)(6), 28.4(a), or 32.1(g). Those rules implement Texas Family Code section 56.01(h-1), which directs the Supreme Court to adopt rules accelerating an appeal of an order certifying a juvenile to stand trial as an adult. The redlines for those rules are in the appendix. (App. Tab O.)

<sup>2</sup> App. Tab A.

counsel.<sup>3</sup> New Rule 6.4(c) allows non-lead counsel to withdraw simply by filing a “nonrepresentation notice.” That notice should simply state that the lawyer no longer represents the party and identify the counsel who will continue to represent the party.

Rule 6.5 was amended to make clear that it applies only to the withdrawal of lead counsel on appeal. Unless a new lead counsel is substituting in, withdrawing lead counsel must continue to include a list of deadlines, the last known address of the party, a statement that the motion was delivered to the party, and a statement that the party was notified of its right to object. The withdrawing lawyer must send a copy of the motion to the client. And unless a new lead counsel is being substituted, the withdrawing lawyer must send a copy of the granting the motion to withdraw to the client and file proof of that service with the clerk.

#### **4. SUPERSEDEAS BONDS AND ALTERNATE SECURITY**

##### **A. Rule 24.1(b)(2) and Rule 24.4(d)**

These rules have been amended (eff. January 1, 2024) to resolve an issue that has confounded clerks and litigants alike.<sup>4</sup> The former version required the trial court clerk to approve a supersedeas bond before it was effective. Litigants were understandably anxious for the clerk to approve their bonds. Clerks, on the other hand, were unsure what they were supposed to check before approving the bonds or what approval even meant.

The new rules simply provide that “a bond is effective on filing.” The rule retains the provision allowing the trial court to review the bond on the motion of any party.

##### **B. Rule 24.2**

In 2023, the Legislature added Texas Civil Practice and Remedies Code chapter 52.007, which allows the posting of “alternative security” in certain cases and addresses redetermination of the supersedeas amount if the court of appeals reduces the judgment. To implement section 52.007, the Court adopted Rules 24.2(e) and 24.2(f) (eff. September 1, 2023).<sup>5</sup>

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<sup>3</sup> App. Tab B (preliminary approval); App. Tab C (final approval). Because no changes were made between the preliminary approval and final approval, the amended rule appears only in the preliminary approval order.

<sup>4</sup> App. Tab D.

<sup>5</sup> App. Tab D.

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First appeared as part of the conference materials for the  
34<sup>th</sup> Annual Conference on State and Federal Appeals session  
"Update on Appellate Rules Changes"