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SC Court of Appeals

Exhibit B

(3) Extension of Time.

The appellate court may extend the time to file a formal bill of exception if, within 15 days after the deadline, the complaining party files the bill in the appellate court with a motion complying with Rule 10.5(b).

(f) Inclusion in Clerk's Record.

The trial court clerk must include any formal bill of exception that is filed in the appellate record.

Notes and Comments

Comment to 1997 change: Former Rules 33, 34, and 35 are merged without substantive change.

Rule 34. Appellate Record

34.1. Contents

The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. Even if more than one notice of appeal is filed, there should be only one appellate record in a case.

34.2. Agreed Record

By written stipulation filed with the trial court clerk, the parties may agree on the contents of the appellate record. An agreed record will be presumed to contain all evidence and filings relevant to the appeal. To request matter to be included in the agreed record, the parties must comply with the procedures in Rules 34.5 and 34.6.

34.3. Agreed Statement of the Case

In lieu of a reporter's record, the parties may agree on a brief statement of the case. The statement must be filed with the trial court clerk and included in the appellate record.

34.4. Form

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

34.5. Clerk's Record

(a) Contents

Unless the parties designate the filings in the appellate record by agreement under Rule 34.2, the record must include copies of the following:

- (1) in civil cases, all pleadings on which the trial was held;
- (2) in criminal cases, the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea;
- (3) the court's docket sheet;
- (4) the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- (5) the court's judgment or other order that is being appealed;
- (6) any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- (7) the notice of appeal;
- (8) any formal bill of exception;
- (9) any request for a reporter's record, including any statement of points or issues under Rule 34.6(c);

(10) any request for preparation of the clerk's record;

(11) in civil cases, a certified bill of costs, including the cost of preparing the clerk's record, showing credits for payments made;

(12) in criminal cases, the trial court's certification of the defendant's right of appeal under Rule 25.2;

(13) in civil cases, any supersedeas bond or certificate of cash deposit in lieu of a bond; and

(14) subject to (b), any filing that a party designates to have included in the record.

(b) Request for Additional Items

(1) Time for Request.

At any time before the clerk's record is prepared, any party may file with the trial court clerk a written designation specifying items to be included in the record.

(2) Request Must Be Specific.

A request must specifically describe the item so that the trial court clerk can readily identify it.

(3) Requesting Unnecessary Items.

An appellate court may — regardless of the appellate record's cost — require a party to pay the cost for including any matter in the record that was requested unnecessarily.

(4) Failure to Timely Request.

An appellate court may order the trial court clerk to prepare a supplemental clerk's record if a relevant item has been omitted from the clerk's record.

(c) Supplementation

If a relevant item has been omitted from the clerk's record, the appellate court, on any party's motion or on its own initiative, may direct the trial court clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item.

(d) Defects or Inaccuracies

If the clerk's record is defective or inaccurate, the appellate court may direct a correction, and if necessary, may direct the trial court clerk to prepare and file a corrected record.

(e) Clerk's Record Lost or Destroyed

If the clerk's record is lost or destroyed, the parties must, if possible, replace it by agreement. If they cannot agree, the appellate court will determine what constitutes the clerk's record.

(f) Original Documents

The trial court clerk should not send original documents unless specifically requested by the appellate court.

(g) Additional Copies of Clerk's Record in Criminal Cases

In a criminal case, the trial court clerk must prepare and file sufficient copies of the clerk's record to allow each party represented by different counsel on appeal to receive a copy.

(h) Clerk May Consult With Parties

The trial court clerk may consult with the parties concerning the contents of the clerk's record to assist in preparing it.

34.5a. Appendix in Lieu of Clerk's Record

(a) Notice of Election

Instead of a clerk's record, a party may elect to file an appendix in civil cases.

(b) Time to File Original Appendix

An original appendix must be filed at the same time as the party's appellant's or appellee's brief.

(c) Supplemental or Joint Appendices

The court may allow, or a party may elect, to file a supplemental or joint appendix.

(d) Court-Directed Supplement

The court may direct the filing of a supplemental appendix if necessary.

(e) Contents of Original Appendix

An original appendix must include:

- (1) the trial court's judgment or other appealable order;
- (2) the notice of appeal;
- (3) any jury charge, court's findings of fact and conclusions of law, request for findings and conclusions, post-judgment motions, and orders on post-judgment motions; and
- (4) any other item pertinent to the issues raised on appeal.

(f) Contents of All Appendices

An appendix must not include unnecessary items and must avoid duplication.

(g) Filing Requirements of All Appendices

An appendix must comply with the filing requirements of Rule 9.

(h) No Clerk's Record

If an appendix is filed, the clerk's record is not required unless otherwise directed.

34.6. Reporter's Record

(a) Contents

The reporter's record consists of the court reporter's transcription of the proceedings and any of the exhibits that the parties designate or the court orders.

(b) Responsibility for Filing Record

(1) Civil Cases.

The appellant must request in writing that the official court reporter prepare the reporter's record. The request must be made at or before the time for perfecting the appeal, and must designate the exhibits and the portions of the testimony to be included. A party must also file a copy of the request with the trial court clerk.

(2) Criminal Cases.

In a criminal case, if the defendant requests a reporter's record, the trial court must order the court reporter to prepare and file the reporter's record.

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(1) Effect on Appellate Points or Issues.

If the appellant requests a partial reporter's record, the appellant must include in the request a statement of the points or issues to be presented on appeal and must file a copy of that statement with the trial court clerk. The appellate court must presume that the partial reporter's record designated by the parties constitutes the entire record for purposes of reviewing the stated points or issues.

(2) Other Parties May Designate Additions.

Any other party may designate additional exhibits and portions of testimony to be included in the reporter's record.

(d) Supplementation

If anything relevant is omitted from the reporter's record, the trial court, the court reporter, or any party may by letter direct the court reporter to prepare, certify, and file in the appellate court a supplemental reporter's record containing the omitted items. Any supplemental record must be filed in duplicate if required by local rule.

(e) Corrections

(1) Inaccuracies.

If the reporter's record is inaccurate, any party may by letter so inform the court reporter and request that the record be made to conform to what occurred in the trial court. If the dispute cannot be resolved, the court must—after notice and hearing—settle the dispute and ensure that the reporter's record is made to conform to what occurred in the trial court.

(2) Lost or Destroyed Record.

If the reporter's record is lost or destroyed, the parties may agree on a written narrative of the missing portions. If they cannot agree, the trial court must—after notice and hearing—determine the form and substance of the replacement record.

(3) Exhibits.

If an exhibit is lost or destroyed and cannot be replaced by agreement, the trial court must—after notice and hearing—determine whether the exhibit's loss or destruction prevents a party from making a point on appeal and, if so, must grant appropriate relief, which may include a new trial.

(f) Reporter's Record Lost or Destroyed

If the reporter's record is lost or destroyed, and a party can show that the appellant has timely requested a reporter's record and that, without the lost or destroyed portion, the appellant cannot effectively present a point of error on appeal, the court must order a new trial.

(g) Original Exhibits

The court reporter should not send original exhibits unless specifically requested by the appellate court.

(h) Additional Copies of Reporter's Record in Criminal Cases

In a criminal case, the court reporter must prepare and file sufficient copies of the reporter's record to allow each party represented by different counsel on appeal to receive a copy.

(i) Sealed Portions of the Record

Sealed portions of the reporter's record must be clearly identified and tendered as separate volumes.

Notes and Comments

Comment to 1997 change: In subdivision 34.2, the requisites of an agreed record are more clearly stated. Former Rule 50(d), regarding the burden to file a complete record, is repealed. Subdivision 34.4 is from former Rules 51(c) and 53(h). Former Rule 50(f), regarding a violation of the rules, is repealed. Subparagraph 34.5(b)(3) allows the appellate court to tax costs against a party for requiring unnecessary items to be included in the clerk's record. Paragraph 34.5(c) is new and provides for supplementation of the clerk's record. The provisions of paragraph 34.5(d) are from former Rule 55(b). The provisions of paragraph 34.5(e) are from former Rule 50(e).

Paragraph 34.5(h) specifically allows the clerk to consult with the parties to determine the contents of the clerk's record. Paragraph 34.6(a), defining the reporter's record, is new. Former Rules 53(b) (Other Requests), (d) (Partial Statement), and (e) (Unnecessary Portions) are merged into paragraph 34.6(c). Paragraph 34.6(d) is new. Paragraph 34.6(e) is from former Rule 55. Paragraph 34.6(f) is from former Rule 50(d). The provisions of former Rules 53(f) (Certification by Court Reporter) and (h) (Form) are moved to the Order of the Supreme Court and the Court of Criminal Appeals on the preparation of the record. Former Rule 53(i) (Narrative Statement) is repealed. The provisions of former Rule 53(j) (Free Statement of Facts) are moved to Rule 20. Former Rule 53(k) (Duty of Appellant to File) is repealed; it is now the duty of the court reporter to file the reporter's record. Paragraph 34.6(g) is from former Rule 51(d). Former Rule 53(g) is now paragraph 34.6(i). Former Rule 53(l) is now paragraph 34.6(h). The need for two duplicate records in a death penalty case was created by the habeas corpus provision in Code of Criminal Procedure article 11.071.

Comment to 2002 change: Rule 34.5(a) is amended to require that the record in a criminal case include the certification of defendant's right of appeal; see Rule 25.2(d). Rule 34.5(c) is amended to make clear that an appellate court may order the trial court to make such a certification for inclusion in a supplemental clerk's record. Subparagraphs 34.6(e) and (f) are amended to clarify the application to exhibits. The language in subparagraph (e)(2) referring to the text of the record is simplified without substantive change. Subparagraph (e) (3) incorporates the procedures specified in (e)(2). The language in subparagraph (f) is clarified to require agreement only as to the portion of the text at issue, and to provide that the trial court may determine that a copy of an exhibit should be used even if the parties cannot agree.

Comment to 2024 Change: New Rule 34.5a is added to implement Texas Civil Practice and Remedies Code section 51.018. It allows the parties in a civil case to file appendices in lieu of a clerk's record and applies only when a party files a notice of appeal on or after January 1, 2024.

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

35.1. Civil Cases

The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

- (a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;
- (b) if Rule 26.1(b) applies, within 10 days after the notice of appeal is filed; or
- (c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

35.2. Criminal Cases

The appellate record must be filed in the appellate court:

- (a) if a motion for new trial is not filed, within 60 days after the date the sentence is imposed or suspended in open court or the order appealed from is signed;
- (b) if a timely motion for new trial is filed and denied, within 120 days after the date the sentence is imposed or suspended in open court; or
- (c) if a motion for new trial is granted, within 60 days after the order granting the motion is signed.

35.3. Responsibility for Filing Record

(1) Civil Cases.

In a civil case, the trial court clerk and the court reporter are jointly responsible for timely filing the appellate record. An appellate court must not dismiss an appeal for a failure to file a record if the failure is the trial court clerk's or the court reporter's fault. The appellate court must allow the trial court clerk or the court reporter a reasonable time to correct the failure before dismissing the appeal or proceeding under Rule 37.3(c).

(2) Criminal Cases.

In a criminal case, the trial court clerk and the court reporter are jointly responsible for timely filing the appellate record.

Notes and Comments

Comment to 1997 change: This is former Rule 54. Subdivision 35.1 clarifies the time to file the record for civil cases. The time to file the record in restricted appeals is extended to 120 days. In criminal cases, subdivision 35.2 specifies that the time to file is measured from the sentencing date, which is the event that generally triggers the right to appeal. Subdivision 35.3 assigns the duty to file the record to the trial court clerk and court reporter in civil cases, as was the rule under former Rule 54(a).

Comment to 2002 change: Subdivision 35.3(c) [now 35.3(1)] is amended to prohibit an appellate court from dismissing a civil appeal for failure to file a record if the failure is due to the fault of the clerk or reporter.

Rule 36. Separate Records on Appeal in Civil Cases

36.1. Separate Records Required

When separate appeals are allowed from an interlocutory order or judgment, the trial court clerk and court reporter must prepare separate appellate records. A party who requests a record must specify the appeal for which it is requested.

36.2. Joint Preparation Permitted

The trial court clerk and court reporter may prepare records jointly when it would expedite the appellate process, but must ensure that the record clearly identifies the appeal for which each part is prepared.

Rule 37. Duties of Appellate Court and Clerk on Appeal

37.1. If Clerk's Record Is Not Filed

If the clerk's record has not been filed, the appellate clerk must notify the trial court clerk and the parties and must take steps to ensure that the clerk's record is filed. If no clerk's record is filed due to appellant's fault, the appellate court may dismiss the appeal for want of prosecution unless the appellant shows that the filing was not due to any fault on the appellant's part.

37.2. If Reporter's Record Is Not Filed

If the reporter's record has not been filed, the appellate clerk must notify the official court reporter and the parties and must take steps to ensure that the reporter's record is filed. If no reporter's record is filed due to appellant's fault, the appellate court may dismiss the appeal for want of prosecution unless the appellant shows that the filing was not due to any fault on the appellant's part.

37.3. Effect of Failure to File Record

If the appellate record has not been filed because the appellant has failed to pay or make arrangements to pay the clerk's or reporter's fee, or to establish indigence, the appellate court may:

- (a) dismiss the appeal for want of prosecution, unless the appellant shows that the failure was not due to any fault of the appellant; or
- (b) if the trial court clerk has filed a partial record, proceed under Rule 34.6(c).

Rule 38. Appendix and Briefs

38.1. Contents and Organization of Appellant's Brief

An appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

- (a) Identity of Parties and Counsel
- (b) Table of Contents
- (c) Index of Authorities
- (d) Statement of the Case

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