

# **PREPARING FOR APPEAL**

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**HOUSTON PARALEGAL ASSOCIATION  
ANNUAL SPRING CLE SEMINAR  
May 7, 2010  
Galveston**

## Calculating deadlines

### **I. General rules**

- Do not count the first day (i.e. date of filing, date of receipt, date of judgment). Begin counting the day after the period starts. Tex. Gov't Code § 311.014(a); TRAP 4.1(a); TRCP 4.
- Count every day after the first day, including weekends and holidays unless the period is for less than five days. Tex. Gov't Code § 311.014(b); TRAP 4.1(a); TRCP 4.
- If the last day falls on the weekend or a legal holiday when the clerk's office is closed or inaccessible, the deadline is the next day that is not a weekend or legal holiday. Tex. Gov't Code § 311.014(b); TRAP 4.1; TRCP 4.
- If deadline is driven by the date of the trial or hearing, count backward from the start of the hearing or trial. When you reach day one, the filing deadline, will be the day before, or day zero.
- If the period to act is five days or less, do not count intervening Saturdays, Sundays or legal holidays. TRCP 4. Start counting the day after the period begins, skip Saturdays, Sundays and holidays, and count until the last day that is not Saturday, Sunday or a holiday. This rule DOES NOT apply when you are counting the three day extension of time in TRCP 21 and 21a and the five day periods for forcible entry and detainer actions in TRCP 748, 749, 749a, 749b, and 749c. When these rules apply, you apply general rule: count Saturdays, Sundays, and legal holidays in the time period unless the last day falls on Saturday, Sunday or legal holiday.

**II. Mailbox rule:** A document is considered “filed” if mailed by the United States Postal Service on the day it is due and received by the clerk's office within 10 days of the due date. TRAP 9.2(b)(1)(C); TRCP 5. Note: Appellate courts sometimes suspend the mailbox rule.

### **III. Deadlines to respond**

- Service by mail: Party is considered served on the date the document is mailed. TRCP 21. To determine response date, add three days to whatever time the party has to respond to the document, counting from the date of mailing. The three-day grace period presumes that the post office delivered the document within three days after it was mailed. If there is an unusual delay, file a motion with the court requesting additional time.
- Service by delivery: Party is considered served on the date the document is delivered. TRCP 21a. No three-day grace period.

- Service by fax: Party is considered served on the date it received the fax if it is received before 5:00 pm. Three-day grace period applies.
- Service by e-service: Party is considered served when the document is sent to the recipient's email address. If the document is sent after 5:00 pm, it is deemed served on the next day that is not a weekend or holiday.

**IV. Extending deadlines:** Generally most appellate courts will grant at least one motion for extension of time, even if the opposing party objects. Motions for extension of time must include a certificate of conference stating that the attorney has conferred with opposing counsel and advising the court whether the motion is opposed. Most motions for extension of time are due within 15 days after the original deadline.

**V. Holidays**

- Appellate courts: All state holidays: New Year's Day, MLK Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, day after Thanksgiving, day before Christmas, Christmas day, day after Christmas.
- District and County courts: All holidays observed by respective county. To be safe, ask the court clerk.
- Emergencies: When the courthouse is closed due to an emergency, such as a natural disaster, it is treated as a legal holiday.

# TAB A

## STATUS OF CASES

CM #	Attorney	Case Name	Case #	Last Action	Date	Next Action	Date
1291.39	JN/PG	XXX v. ZZZ	00-00-00000-CV (Beaumont)	Notice of appeal filed Pauper's affidavit filed Order lifting stay Notice of appearance filed Reporter's record filed Clerk's record filed Appellant's brief filed Motion to w/draw as counsel for AE	7/22/09 7/22/09 9/8/09 11/9/09 11/9/09 12/17/09 3/22/10 3/23/10	Appellee's brief due	4/21/10
12223.21	LLKR/JN	XXX v. ZZZ	00-00-00000-CV (Houston)	Judgment signed MNT overruled by operation of law G's notice of appeal filed B's notice of appeal filed Clerk's record filed Supplemental clerk's record filed Y's settlement finalized SC's mtn to dismiss denied Received documents from TDI Reporter's record filed Supp CR's requested	9/4/08 11/18/08 11/26/08 12/10/08 12/30/08 2/27/09 6/5/09 6/30/09 9/15/09 1/8/10 3/3/10	Appellant's brief due	5/10/10
13810.61	MS/KD	XXX v. ZZZ	0000-00000 (151st – Harris)	Motion to dismiss denied Proposed FOF & COL submitted 1st amended petition filed TI's FOF & COL signed	6/8/09 6/25/09 6/30/09 7/2/09	Await signing of order on motion to dismiss	Court action
16041.17	CW/MS/KD SH	XXX v. ZZZ	00-00000 (5th Circuit)	C's notice of appeal Forms for appearance filed Transcript filed in district court ROA certified to Fifth Circuit Briefing schedule issued	12/1/09 12/18/09 1/4/10 2/4/10 2/9/10	Appellant's brief due File appellee's brief	4/6/10 5/6/10
17997.705	LL/MT/KB/ TK	XXX v. ZZZ	X-00-0000 (S.D. – Houston)	Joint pretrial order filed X's request for TRO denied Z's initial trial plan filed Z's final trial plan filed Trial continued until G s/j ruling Opinion from Judge G Order denying all pretrial mtns w/out prejudice G opinion on damages G supp opinion on damages G final judgment	1/10/07 2/22/07 2/26/07 3/5/07 3/14/07 8/28/07 9/26/07 12/18/07 8/11/08 8/22/08	File dispositive motion	Soon

CM #	Attorney	Case Name	Case #	Last Action	Date	Next Action	Date
19708.5	JN/CC	XXX v. ZZZ	00-00-000-CV (Corpus)	Order denying amended MSJ Order denying MSJ Oral argument Opinion issued (judgment aff'd)	11/26/08 12/3/08 5/20/09 8/13/09	Stayed  File petition for review	9/4/09  45 days from date appeal is reinstated
19708.6	JN	XXX v. ZZZ	00-00-000-CV (Corpus)	Summary judgment order signed Notice of appeal filed Docketing statement filed / fee paid AT's designation of clerk's record filed Clerk's record filed Appellant's brief filed Suggestion of bankruptcy filed	3/31/09 4/20/09 5/1/09 5/29/09 6/10/09 8/11/09 9/4/09	Stayed Appellee's brier due  ***** File mtn to stay trial setting	9/4/09 Await for reinstatement  Soon
19708.7	JN	XXX v. ZZZ	0000-00-000000-X (357th - Cameron)	Original Petition Notice of bankruptcy filed	8/14/09 10/2/09	Stayed	10/2/09
21346.39	WP/EB/AL	XXX v. ZZZ	0000-00000 (164th - Harris)	7th amended petition filed Plaintiffs' mtn for partial s/j filed Defendants' mtn for s/j filed Plaintiffs' amd mtn for partial s/j filed Defendants' resp to trs msj filed Plaintiffs' resp to Δs msj filed Defendants' 3rd amd answer filed Plaintiffs' objections to Δs s/j evidence Defendants' resp to trs obj to s/j evid Defendants' reply to trs resp to msj Defendants' obj to trs resp evidence Δs' obj to appearance of new counsel	1/29/10 1/29/10 3/4/10 3/5/10 3/17/10 3/19/10 3/19/10 3/19/10 3/23/10 3/24/10 3/24/10 3/24/10 3/24/10 3/24/10	Conference call (recurring) Await decision on msj	Wed @ 10:00 Court action
24626.22	LL	XXX v. ZZZ	00-0000 (Tx Sup Ct)	Judgment signed Opinion issued (judgment aff'd) Petition for review filed Resp to petition for review filed Reply to response to PFR filed Full briefing requested Petitioner's brief filed Respondent's brief filed (X) Respondents brief filed (Y) Reply brief filed PM amicus brief submitted TPA amicus brief submitted Petition for review denied	12/22/06 3/26/09 5/20/09 6/16/09 7/1/09 8/26/09 9/25/09 11/16/09 11/16/09 12/1/09 12/17/09 1/8/10 3/12/10	Motion for rehearing due	3/29/10

**TAB B**

## Trial Preparation Task List

NO.	TASK	DEADLINE	PERSON	STATUS/NOTES
1.	Prepare trial notebook		LI	
2.	Supplement disclosures	10/26/07	CW	
3.	Schedule conference room for use as war room for duration of trial	Done	LI	War room on 21.
4.	30 days out from trial	10/26/07		Trial setting for 2-week docket beginning 11/26/07.
5.	Witness meeting with XXXXX			10/25/07 @ 8:00 (Conf Rm 21E)
6.	Witness meeting with ZZZZ		CW	10/26/07 @ 3:45 (Conf Rm 21E)
7.	Schedule additional witness meetings	Ongoing	LI	Need: YYYY & WWWW
8.	Hearing on Motion for Partial S/J	To be set		Hearing requested. Waiting to hear back from coordinator re: possible hearing date.
9.	Determine: (a) whether exhibits will be imaged; (b) whether trial presentation software is necessary; and (c) begin process for editing/digitizing depo clips if necessary		Trial services	Exhibits will be imaged. Let trial services group determine best presentation software to use. Email sent to DDDD on 10/23/07. CW to determine clips for digitizing.
10.	Prepare and file <i>Daubert</i> motions (need to be heard no later than 11/12/07)		KID	
11.	Complete depositions			
12.	Pre-trial conference	To be set		

NO.	TASK	DEADLINE	PERSON	STATUS/NOTES
13.	File and exchange witness list	Pretrial Conference	CW	
14.	File and exchange draft jury charge	Pretrial Conference	KD	
15.	File and exchange exhibits and exhibit list	Pretrial Conference	CW	
16.	File and exchange page/line designations of depo excerpts or edited videotapes	Pretrial Conference	CW	
17.	File and exchange motions in limine	Pretrial Conference	CW	
18.	Determine method of delivery of supplies/filings to court during trial		LI	
19.	Determine point person for contacting witnesses during trial		LI	
20.	Determine lunch schedule		LI	
21.	Determine whether any special equipment will be necessary (e.g., Smart board, projector, etc.)		LI/Trial Services	
22.	If hard copies of exhibits being used, arrange for transport to courthouse		LI	
23.	Pack trial briefcase		LI	
<b>24.</b>	<b>Trial setting</b>	<b>11/26/07</b>		

**TAB C**

**TIMETABLE FOR APPEAL FROM CIVIL JURY TRIAL**

<b>Step</b>	<b>Action</b>	<b>Rule</b>	<b>Time Limit</b>	<b>Date Due</b>	<b>Date Filed</b>
1.	Judgment signed	TRCP 306a(1)	Time set by court action.	* * *	04/01/10
2.	Motion for new trial/modify (MNT)	TRCP 324, 329b(a)	30 days from Step 1.	05/03/10	
3.	MNT overruled	TRCP 329b(c), (e)	By written order or 75 days from Step 1 by op. of law.	06/15/10 (op. of law)	* * *
4.	Perfect the appeal by filing a notice of appeal w/ trial court; send copy to court of appeals	TRAP 25.1(a), 26.1(a)	If timely MNT, 90 days from Step 1.	06/30/10	
5.	Supersedeas bond	TRAP 24.1, 24.2 and TRCP 627	Promptly before garnishment or execution (30 days from date MNT overruled).	07/15/10 (if MNT overruled by op. of law)	
6.	File docketing statement with court of appeals	TRAP 32.1	Upon perfecting appeal.	* * * <sup>1</sup>	
7.	Designation of clerk's record	TRAP 34.2, 34.5	Upon perfecting appeal.	* * *	
8.	Request reporter's record and arrange for payment	TRAP 34.6	Upon perfecting appeal.	* * *	
<b>9.</b>	<b>Judgment becomes final</b>	<b>TRCP 329b(d), (e), (g)</b>	<b>30 days from date MNT is overruled.</b>	<b>07/15/10</b>	
10.	Appellate record due	TRAP 35.1, 35.3	120 days from Step 1.		
11.	Appellant's brief (6 copies)	TRAP 38.1, 38.6(a)	30 days from Step 10.		
12.	Appellee's brief (6 copies)	TRAP 38.2, 38.6(b)	30 days from Step 11.		

<sup>1</sup> TRAP 32.1 requires the filing of a docketing statement in the court of appeals upon perfecting an appeal in a civil case. However, the common practice in Houston is to await docketing in the First or Fourteenth Court of Appeals and then file with the assigned court.

<b>Step</b>	<b>Action</b>	<b>Rule</b>	<b>Time Limit</b>	<b>Date Due</b>	<b>Date Filed</b>
13.	Reply brief due	TRAP 38.6(c)	20 days from Step 12.		
14.	Oral argument, if requested	TRAP 39	Time set by court action.		
15.	Court of appeals issues opinion	TRAP 43, 47.1	Time set by court action.		
16.	File motion for rehearing in court of appeals	TRAP 49.1	15 days from Step 15.		
17.	Motion for rehearing overruled	TRAP 49.3	Time set by court action.		
18.	Petition for review due	TRAP 53.2, 53.7	If no MRH, 45 days from Step 15; or 45 days from Step 17.		
19.	Petition for review filed by other party	TRAP 53.7(c)	45 days from Step 17 or 30 days from Step 18.		
20.	Respondent to file response to petition	TRAP 53.7(d)	30 days from Step 18 or 19.		
21.	File reply to response	TRAP 53.7(e)	15 days from Step 20.		
22.	Supreme Court requests briefing on the merits	TRAP 55.1	Time set by court.		
23.	File petitioner's brief on merits	TRAP 55.2	Time set by court.		
24.	Respondent's brief on merits due	TRAP 55.3	Time set by court.		
25.	File petitioner's reply brief	TRAP 55.4	Time set by court.		
26.	Supreme Court denies petition or grants and sets case for argument	TRAP 56.1	Time set by court action.		
27.	Oral argument	TRAP 58.7, 59	Time set by court.		
28.	Supreme Court issues opinion	TRAP 60, 63	Time set by court action.		

<b>Step</b>	<b>Action</b>	<b>Rule</b>	<b>Time Limit</b>	<b>Date Due</b>	<b>Date Filed</b>
29.	File motion for rehearing in Supreme Court	TRAP 64.1	If petition for review denied, 15 days from Step 26; granted, 15 days from Step 28.		
30.	Supreme Court overrules motion for rehearing	TRAP 64.3			
31.	Mandate issues	TRAP 18.1	Time set by court action.		

**TAB D**

*STYLE OF CASE*

**PLAINTIFF/DEFENDANT'S REQUEST FOR  
PREPARATION OF REPORTER'S RECORD**

TO THE COURT REPORTER OF THE \_\_\_\_ JUDICIAL DISTRICT COURT:

\_\_\_\_\_, Defendant/Plaintiff and now Appellant, requests that the official court reporter and any substitute court reporter of the \_\_\_\_\_ Judicial District Court of \_\_\_\_\_ County, Texas, prepare, certify, and file the reporter's record from these proceedings in the \_\_\_\_\_ Court of Appeals, sitting in \_\_\_\_\_, Texas. This request is filed in accordance with Rule 34.6(b) of the Texas Rules of Appellate Procedure.

Under Rule 34.6(a), the reporter's record should contain the following:

- (1) all pre-trial proceedings;
- (2) voir dire;
- (3) opening statements to the jury;
- (4) the testimony of all witnesses;
- (5) all trial exhibits (including all exhibits tendered as well as the exhibits admitted into evidence);
- (6) all offers of proof or bills of exception;
- (7) all evidentiary objections;
- (8) all motions made during trial;
- (9) all arguments of counsel (including closing arguments);
- (10) the charge conference (including objections to the charge);
- (11) all court rulings; and
- (12) all post-trial proceedings.

The Final Judgment was signed on February 25, 2005, and Defendant timely filed a motion for new trial. Therefore, the reporter's record is due to be filed with the Thirteenth Court of Appeals within 120 days from that date, or by June 27, 2005. TEX. R. APP. P. 35.1(a).

Respectfully submitted,

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of *Plaintiff's/Defendant's Request for Reporter's Record* was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure on this \_\_\_\_ day of \_\_\_\_\_, 2010:

***Counsel for Plaintiffs/Defendants:***

\_\_\_\_\_  
signature

**TAB E**

*STYLE OF CASE*

**PLAINTIFF/DEFENDANT'S DESIGNATION OF CLERK'S RECORD ON APPEAL**

TO THE CLERK OF THE \_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY, TEXAS:

XXX, Plaintiff/Defendant and now Appellant, is appealing from the Final Judgment signed September 4, 2008, to the \_\_\_\_\_ Court of Appeals, sitting in \_\_\_\_\_, Texas, and respectfully requests the clerk of the court to prepare, for inclusion in the clerk's record, the following designated items:

**I.**

**Mandatory Items to be Included in Clerk's Record**

Plaintiff/Defendant respectfully requests the clerk to include all matters required by Rule 34.5(a) of the Texas Rules of Appellate Procedure in the clerk's record in this appeal.

## II.

### Additional Specified Items to Include in the Clerk's Record

In addition to the matters required by Rule 34.5(a) of the Texas Rules of Appellate Procedure, Plaintiff/Defendant respectfully requests that the following specific items be included in the clerk's record in the appeal of this case.

<i>Request No.</i>	<i>Document Description</i>	<i>Date</i>
1.	Original Petition and Application for Prejudgment Writ of Garnishment	07/03/02
2.	First Amended Answer	09/16/02
3.	Response to XX Application for Pre-Judgment Writ of Garnishment	09/23/02
4.	Motion for Summary Judgment	10/08/02
5.	XX's Motion for Summary Judgment and No Evidence Motion for Summary Judgment and Alternatively Motion for Partial Summary Judgment (w/ proposed order)	10/24/02
6.	Motion for Continuance and Response of XX to Motion for Summary Judgment and Motion for Summary Judgment and No Evidence Motion for Summary Judgment and Alternatively Motion for Summary Judgment, Subject Thereto	11/09/02
7.	Agreed Order Appointing Special Master	10/15/04
8.	Final Judgment	09/04/08
9.	Motion to Modify Final Judgment	10/01/08
10.	Motion for New Trial and Motion to Reform Judgment on XX's Claims	10/02/08
11.	Plaintiff's Notice of Appeal	11/26/08
12.	Plaintiff's Request for Reporter's Record	11/26/08
13.	Plaintiff's Designation of Clerk's Record on Appeal	12/08/08
14.	The Court's Docket Sheet	
15.	Certified Bill of Costs	

### **III.**

#### **Due Date for Clerk's Record**

The trial court signed the Final Judgment on September 4, 2008 and timely post-judgment motions were filed. Therefore, the clerk's record is due to be filed in the First Court of Appeals on or before January 2, 2009. TEX. R. APP. P. 35.1(a).

Respectfully submitted,

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of *Plaintiff's/Defendant's Designation of Clerk's Record on Appeal* was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure on this \_\_\_\_ day of \_\_\_\_\_, 2010:

***Counsel for Plaintiffs/Defendants:***

\_\_\_\_\_  
signature