



# The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711  
Telephone: 512/463-1312 Facsimile: 512/463-1365

Chambers of  
Justice Nathan L. Hecht

September 25, 2007

Mr. Charles L. "Chip" Babcock  
Chair, Supreme Court Rules Advisory Committee  
Jackson Walker L.L.P.  
1401 McKinney, Suite 1900  
Houston, TX 77010

Re: Referral of Rules Issues

*Via e-mail*

Dear Chip:

The Court requests the Advisory Committee's recommendations on several potential changes to the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Uniform Format Manual for Texas Court Reporters. These proposals are summarized in the attached appendix A. A copy of the SBOT Rules Committee proposal to amend Tex. R. Civ. P. 301 and Tex. R. App. P. 26.1(a) is separately attached in electronic format.

The Court greatly appreciates the Committee's thoughtful consideration of these issues, for its dedication to the rules process, and for your continued leadership on the Committee. I look forward to seeing you all on October 19th.

Sincerely,

Nathan L. Hecht  
Justice

A handwritten signature in black ink, appearing to read "Nathan L. Hecht".

## RULES OF CIVIL PROCEDURE

### Rule: 301

#### Current Text:

**Rule 301 Judgments.** The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

#### Summary of Issue:

The State Bar of Texas (SBOT) Rules Committee recently submitted to the Court a proposal to amend Rule 301 to provide a clear post-judgment deadline for filing a motion for judgment non obstante veredicto (JNOV). *See Gomez v. Tex. Dep't of Criminal Justice*, 896 S.W.2d 176, 176-77 (Tex. 1995) (per curiam) (holding that “bill of review” filed within 30 days of judgment extended time to perfect appeal under former Appellate Rule 41(a)(1) because it “assailed the trial court’s judgment”); *Kirschberg v. Lowe*, 974 S.W.2d 844, 847-48 (Tex. App.CSan Antonio 1998, no pet.) (noting that Tex. R. Civ. P. 301 provides no explicit time limit to file JNOV motion, but concluding that, under *Gomez*, JNOV motion filed within time for filing motion for new trial extends appellate timetable). The Advisory Committee is asked to consider the SBOT Rules Committee’s proposed revisions to Rule 301, which are set forth below, as well as its corresponding proposal to amend Appellate Rule 26.1(a), shown on page 3.

#### Proposed Revised Text:

##### Rule 301 Judgments.

1. The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the parties all the relief to which each may be entitled either in law or equity.
2. After the verdict has been entered under Rule 293, upon motion and reasonable notice the court may render judgment notwithstanding the verdict if a directed verdict would have been proper. The court may, upon like motion and notice, set aside any jury finding on a question that has no support in the evidence. Such motions and any amended motions shall be filed not later than the time for filing a motion for new trial under Rule 329b. Any timely filed motion or amended motion shall extend the trial court’s plenary power to grant a judgment notwithstanding the verdict, set aside any jury finding, grant a new trial or to vacate, modify, correct, or reform the judgment or appealable order for the same period as would a timely filed motion for new trial under Rule 329b. In the event an original or amended motion under this rule is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on the expiration of that period.
3. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

## **RULES OF APPELLATE PROCEDURE**

### **Rule: 26.1(a)**

#### **Current Text (with proposed changes shown):**

**26.1 Civil Cases.** The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:

(1) a motion for new trial;

(2) a motion to modify the judgment;

(3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or

(4) a motion for judgment notwithstanding the verdict or to disregard jury findings under Texas Rule of Civil Procedure 301; or

(4~~5~~) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;

#### **Summary of Issue:**

The SBOT Rules Committee proposes amending Tex. R. App. P. 26.1(a) as shown in conjunction with its proposal, summarized above on pages 2-3, to amend Tex. R. Civ. P. 301. The Court requests the Advisory Committee's analysis of this proposal.

### **Rule: 53.7(a)**

#### **Current Text:**

#### **53.7 Time and Place of Filing.**

(a) **Petition.** The petition must be filed with the Supreme Court clerk within 45 days after the following:

(1) the date the court of appeals rendered judgment, if no motion for rehearing is timely filed; or

(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing.

#### **Summary of Issue:**

Appellate Rule 4.3(a) provides that if the trial-court judgment is modified in any respect while the trial court has plenary power, any period that runs from the signing of the judgment is extended to run from the date the modified judgment is signed. But Rule 53.7(a), which governs the time period for filing a petition for review, does not contain any provision extending the time to file if the court of appeals alters its judgment or opinion during its plenary power. Unless the modification is made in conjunction with the court of appeals' ruling on a timely filed motion for rehearing, in which case the ruling on the motion extends the time to file under Rule 53.7(a)(2). The Committee is asked to consider whether Rule 53.7(a) or another Appellate Rule should be amended to address this issue.

## **UNIFORM FORMAT MANUAL FOR TEXAS COURT REPORTERS**

### **Provision: Section 16.16**

**Current text:**

16.16 Audio/Video Recordings. Generally, audio/video recordings played in court are entered as an exhibit in the proceedings. When the exhibits are played in court, a contemporaneous record of the proceedings will not be made unless the Court so orders.

**Summary of Issue:**

At the 2007 State Bar Advanced Civil Appellate Practice Course, Stephen Tipps noted that the above provision appears to conflict with Appellate Rule 13.1, which requires the official court reporter or court recorder to, “unless excused by agreement of the parties, attend court sessions and make a full record of the proceedings.” Tex. R. App. P. 13.1(a). Mr. Tipps notes that when videotape deposition excerpts or other audio or audiovisual recordings are played for the jury, court reporters sometimes rely on Uniform Format Manual ' 16.16 and do not transcribe the recording being played. Although this may not be problematic if a prior transcription of the recording is offered in evidence, in other casesCwhere either no transcription exists, or an existing transcription is never admitted in evidenceCthe trial reporter's failure to transcribe may result in no transcription of the material presented appearing in the appellate record, potentially frustrating appellate review. The Committee is asked to consider the relationship between the TRAP and UFM provisions governing transcription and recommend whether either set of rules should be amended to address the issue.