

Issue: Although TRAP 4.2(c) requires the trial court to sign “a written order that finds the date when the party or the party’s attorney first either received notice or acquired actual knowledge that the judgment or order was signed,” TRCP 306a does not. Recently, the supreme court held that “when the trial court fails to specifically find the date of notice, the finding may be implied from the trial court’s judgment, unless there is no evidence supporting the implied finding or the party challenging the judgment establishes as a matter of law an alternate notice date,” disapproving court of appeals’ opinions to the contrary. *In re Lynd Co.*, 195 S.W.3d 682, 686 (Tex. 2006). Justice Hecht’s September 22, 2006 letter asks whether TRCP 306a(5) should be amended to “require the trial court to specify the date a party received late notice of judgment.” The subcommittee unanimously recommends amendment.

Rule 306a

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3. Notice of Judgment. When the final judgment or other appealable order is signed, the clerk of the court shall immediately give notice to the parties or their attorneys of record by first class mail advising that the judgment or order was signed. Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

4. No Notice of Judgment. If within twenty days after the judgment or other appealable order is signed, a party adversely affected by it or his attorney has neither received the notice required by paragraph (3) of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in paragraph (1) shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.

5. Motion, Notice, and Hearing, and Order. In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received the notice required by Texas Rule of Civil Procedure 306a.3 or acquired actual knowledge of the signing of the judgment and that this date was more than twenty days after the judgment was signed. After hearing the motion, the trial court must sign a written order expressly finding the date the party or the party’s attorney first either received the notice required by Texas Rule of Civil Procedure 306a.3 or acquired actual knowledge that the judgment or order was signed.