

**[Current Rule]**

**RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS  
OF LAW**

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule 21a.

**[Proposed New Rule]**

**RULE 296. REQUESTS FOR FINDINGS OF FACTS AND CONCLUSIONS  
OF LAW**

In any case (i) tried to the Court without a jury or (ii) tried to a jury in which one or more ultimate issues are tried to the Court, any party may request the Court to state in writing findings of fact and conclusions of law. Any request shall be filed with the Clerk within five days from the date the final judgment is signed. The Clerk shall promptly deliver a copy of such request to the judge who tried the case. A request for findings of fact and conclusions of law, and any proposed findings of fact and conclusions of law, shall be served on all parties in accordance with Rule 21a.

**[Current Rule]**

**RULE 297. TIME TO FILE FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21 a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

**[Proposed New Rule]**

**RULE 297. FILING OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**a. Time to File.**

The Court with whom a timely request for findings of fact and conclusions of law has been filed shall issue and file findings of fact and conclusions of law within twenty days from the date of filing of the request. The Clerk shall cause a copy of any findings and conclusions to be promptly mailed to each party.

**b. Form of Findings and Conclusions.**

The Court shall state in broad form findings of fact on each cause of action and defense raised by the pleadings. Each finding of fact and conclusion of law should be stated by a separately numbered paragraph.

**[Current Rule]**

**RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a.

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

**[Proposed New Rule]**

**RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**a. Time for Request.**

After the Court files findings of fact and conclusions of law, any party may file a request for specified additional findings or conclusions or propose specified amendments to the findings or conclusions within twenty days of the filing of the findings and conclusions.

**b. Time for Response.**

Within ten days from the date on which a request for additional or amended findings and conclusions is filed, the Court shall file any additional or amended findings and conclusions that it determines to be appropriate. The Clerk shall cause a copy of any additional or amended findings and conclusions to be mailed promptly to each party.

**[Current Rule]**

**RULE 299. OMITTED FINDINGS AND PRESUMED FINDINGS**

When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

**[Proposed New Rule]**

**RULE 299. OMITTED FINDINGS**

When findings of fact are filed by the court they shall form the basis of the judgment. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense no element of which has been requested or found.

**[Current Rule]**  
**RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED  
AND NOT RECITED IN A JUDGMENT**

Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

**[Proposed New Rule]**  
**299a. FINDINGS OF FACT TO BE SEPARATELY FILED  
AND NOT RECITED IN A JUDGMENT.**

Findings of fact should not be recited in a final judgment. If findings of fact are recited in a final judgment, and findings of fact are made pursuant to Rules 297 or 298, findings of fact made pursuant to Rules 297 or 298 shall control for appellate purposes.

**[Current Rule]**  
**RULE 300. COURT TO RENDER JUDGMENT**

Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

**[Proposed New Rule]**  
**RULE 300. JUDGMENTS AND DECREES**

**a. Issuance.**

The court shall sign a judgment on the facts found, whether by findings of fact, or jury verdict, unless set aside, a new trial is granted, or a judgment is rendered notwithstanding the verdict.

**b. Final Judgment.**

A final judgment shall be in writing and shall dispose of all parties and claims. When less than all the parties or all the claims are disposed of by written orders, no one of which disposes of all parties and claims, none of the orders is final until a judgment or order is signed that disposes of the remaining parties and claims.

**c. Form and Substance.**

A final judgment should:

1. Contain the names of each of the parties;
2. Explain the disposition of the causes of action and defenses; and state any relief granted or denied, to or against, each party.

**[Current Rule]**  
**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.

**[Proposed New Rule]**  
**RULE 301. MOTIONS RELATING TO JUDGMENTS**

**(a) Motion for Judgment on the Verdict.** A party may move for judgment on the verdict of the jury.

**(b) Motion for Judgment as a Matter of Law.** A party may move for judgment as a matter of law, and include a request to disregard a jury finding as a matter of law, on a claim or defense:

(1) if the evidence, after the adverse party rests its evidence, or at the close of all of the evidence, or after the verdict in a jury case and before judgment, (i) is legally insufficient for a reasonable jury to find against the movant on a particular issue of fact or if the evidence conclusively establishes the issue in the movant's favor, and (ii) if, under the controlling law, a judgment cannot properly be rendered against the movant on that claim or defense without a finding adverse to the movant on an issue that has been disregarded, and a judgment as a matter of law should be rendered for movant as to that claim or defense; or

(2) if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge affirmatively misstates controlling law.

**(c) Motion to Modify Judgment.** A party may move to modify a judgment as a matter of law, including a request to disregard a jury finding as a matter of law, after a judgment has been rendered:



(1) if the evidence is legally insufficient for a reasonable jury to find against the movant on a particular issue of a fact or if the evidence conclusively establishes the issue in the movant's favor;

(2) if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge affirmatively misstates controlling law; or

(3) if the judgment should be vacated, modified, reformed, or corrected in any respect for any reason.

A motion for judgment as a matter of law is not a prerequisite to a motion to modify a judgment.

**(d) Motion for New Trial.** A party may move to set aside a judgment and seek a new trial pursuant to Rule 302.

**(e) Motion for Judgment Record Correction.** A party may move, with written notice to all parties interested in a judgment, for correction or reformation of clerical mistakes made in reducing to writing the judgment rendered by the judge.

**(f) Motion Practice.** A motion identified in this rule must state the specific complaint or request for relief in such a way that the matter can be understood by the judge. A party may file one or more motions identified in this rule and may renew or refile an additional motion of the same type containing additional complaints and requests for relief despite the denial of any previous motion. A party may also submit a proposed judgment or order with the motion.

**[Current Rule]**

**RULE 302. ON COUNTERCLAIM**

If the defendant establishes a demand against the plaintiff upon a counterclaim exceeding that established against him by the plaintiff, the court shall render judgment for defendant for such excess.

**[Proposed New Rule]**

**RULE 302. MOTIONS FOR NEW TRIAL**

**(a) Grounds.** For good cause, a new trial, or partial new trial under paragraph (f), may be granted and a judgment may be set aside on motion of a party or on the judge's own motion, in the following instances, among others:

- (1) when the evidence is factually insufficient to support a jury finding;
- (2) when a jury finding is against the overwhelming preponderance of the evidence;
- (3) when the damages awarded by the jury are manifestly too small or too large because of the factual insufficiency or overwhelming preponderance of the evidence;
- (4) when the trial judge has made an error of law that probably caused rendition of an improper judgment;
- (5) when injury to the movant has probably resulted from: (i) misconduct of the jury; or (ii) misconduct of the officer in charge of the jury; or (iii) improper communication to the jury; or (iv) a juror's erroneous or incorrect answer on voir dire examination;
- (6) when new, non-cumulative evidence has been discovered that was not available at the trial by the movant's use of reasonable diligence and its unavailability probably caused the rendition of an improper judgment;
- (7) when a default judgment should be set aside upon either legal or equitable grounds;
- (8) when a judgment has been rendered on citation by publication, the defendant did not appear in person or by an attorney selected by the defendant and good cause for a new trial exists;
- (9) when there is a material and irreconcilable conflict in jury findings;

(10) when any improperly admitted evidence, error in the court's charge, argument of counsel, or other trial court occurrence or ruling probably caused rendition of an improper judgment;

(11) when any other ground warrants a new trial in the interest of justice.

**(b) Form.** Complaints in general terms shall not be considered. Each complaint in a motion for new trial shall identify the matter of which complaint is made in such a way that the complaint can be understood by the judge.

**(c) Affidavits.** Supporting affidavits are required for complaints based on facts not otherwise in the record, such as:

- (1) jury misconduct;
- (2) newly discovered evidence;
- (3) equitable grounds to set aside a default judgment; or
- (4) good cause to set aside a judgment after citation by publication.

**(d) Procedure For Jury Misconduct.**

**(1) Hearing.** When the ground of the motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of the jury, or improper communications made to the jury, or a juror's erroneous or incorrect answer on voir dire examination, the judge shall hear evidence from members of the jury or others in open court and may grant a new trial if it reasonably appears from the evidence both on the hearing of the motion and from the record as a whole on the trial of the case that injury probably resulted to the complaining party.

**(2) Testimony Of Jurors.** A juror may not testify as to any matter or statement occurring during the jury's deliberations, or on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in evidence for any of these purposes. However, a juror may testify whether: (i) any outside influence was improperly brought to bear upon any juror; or (ii) the juror was qualified to serve.

**(e) Excessive Damages; Remittitur**

**(1) Excessive Damages.** If the judge is of the opinion that the damages found by the jury are not supported by factually sufficient evidence, the judge may determine the greatest amount of damages supported by the evidence and may, as a condition of overruling a motion

for new trial, suggest that the party claiming such damages file a remittitur of the excess within a specified period.

**(2) Remittitur By Party.** Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution may issue only for the balance of such judgment.

**(f) Partial New Trial.** If the judge is of the opinion that a new trial should be granted on a point or points that affect only a part of the matters in controversy that is clearly separable without unfairness to the parties, the judge may grant a new trial as to that part only, but a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.

**[Current Rule]**

**RULE 303. ON COUNTERCLAIM FOR COSTS**

When a counterclaim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counterclaim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a claim existing at the commencement of the suit, he shall recover his costs.

**[Proposed New Rule]**

**RULE 303. PRESERVATION OF COMPLAINTS**

**(a) General Preservation Rule.** As a prerequisite to the presentation of a complaint for appellate review, a timely request, objection, or motion must appear of record, stating the specific grounds for the ruling that the complaining party desired the trial court to make if the specific grounds were not apparent from the context. No complaint shall be considered waived if the ground stated is sufficiently specific to make the judge aware of the complaint. The judge's ruling upon the complaining party's request, objection or motion must also appear of record provided that the overruling by operation of law of a motion for new trial or a motion to modify the judgment is sufficient to preserve for appellate review the complaints properly made in the motion, unless the taking of evidence is necessary for proper presentation of the complaint in the trial court. A ruling may be shown in the judgment, in a signed separate order, in the statement of facts, or in a formal bill of exceptions. If the trial judge refuses to rule, an objection to the judge's refusal to rule is sufficient to preserve the complaint. Formal exceptions to rulings or orders of the trial court are not required.

**(b) When a Motion for New Trial is Required.** As a prerequisite to appellate review, the following complaints shall be made in a motion for new trial:

- (1) jury misconduct, newly discovered evidence, equitable grounds to set aside a judgment, or any other complaint on which evidence must be heard;
- (2) the evidence is factually insufficient to support a jury finding;
- (3) a jury finding is against the overwhelming preponderance of the evidence;
- (4) the damages awarded by the jury are manifestly too large or too small because of the factual insufficiency or overwhelming preponderance

of the evidence;

(5) an incurable jury argument, if not otherwise ruled on by the trial court;

(6) good cause to set aside a judgment after citation by publication; or

(7) a jury verdict that will not support any judgment.

**(c) Nonjury Cases: Legal and Factual Sufficiency of Evidence.** In a nonjury case, a complaint regarding the legal or factual insufficiency of the evidence, including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a request that the judge amend a fact finding or make additional finding of fact, may be made for the first time on appeal in the complaining party's brief.

**(d) Informal Bills of Exception and Offers of Proof.** When evidence is excluded, the offering party shall as soon as practicable, but before the charge is read to the jury or before the judgment is signed in a nonjury case, be allowed to make, in the absence of the jury, an offer of proof in the form of a concise statement. The judge may, or at the request of a party shall, direct the making of the offer in question and answer form. A transcription of the reporter's notes or of the electronic tape recording showing the offer, whether by concise statement or question and answer, showing the objections made, and showing the ruling, when included in the statement of facts certified by the reporter or recorder, shall establish the nature of the evidence, the objections and the ruling. The judge may add any other or further statement showing the character of the evidence, the form in which offered, the objection made and the ruling. No further offer need be made. No formal bills of exception are needed to authorize appellate review of exclusion of evidence. When the judge hears objections to offered evidence out of the presence of the jury and rules that the evidence be admitted, the objections are deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating them.

**(e) Formal Bills of Exception.** The preparation and filing of formal bills of exception shall be governed by the following rules:

- (1) No particular form of words shall be required in a bill of exception, but the objection to the ruling or action of the judge and the ruling complained of shall be stated with such circumstances, or so much of the evidence as may be necessary to explain and no more, and the whole as briefly as possible.

- (2) When the statement of facts contains all the evidence requisite to explain the bill of exception, evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.
- (3) The ruling of the judge in giving or qualifying instructions to the jury shall be regarded as approved unless a proper and timely objection is made.
- (4) Formal bills of exception shall be presented to the judge for his allowance and signature.
- (5) The judge shall submit the bill to the adverse party or the adverse party's counsel, if in attendance at the court, and if the adverse party finds it to be correct, the judge shall sign it without delay and file it with the clerk.
- (6) If the judge finds the bill incorrect, the judge shall suggest to the parties or their counsel such corrections as the judge deems necessary, and if they are agreed to the judge shall make such corrections, sign the bill and file it with the clerk.
- (7) Should the parties not agree to the judge's suggested corrections, the judge shall return the bill to the complaining party with the judge's refusal endorsed on it, and shall prepare, sign and file with the clerk such a bill of exception as well, in the judge's opinion, present the ruling of the court as it actually occurred.
- (8) Should the complaining party be dissatisfied with the bill filed by the judge, the complaining party may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as originally presented, have it filed as part of the record of the cause. The truth of the matter may be controverted and maintained by affidavits, not exceeding five in number on each side, filed with the papers of the cause, within ten days after the filing of the bill. On appeal the truth of the bill shall be determined from the affidavits so filed.
- (9) In the event of conflict between a formal bill and the statement of facts, the bill shall control.
- (10) Anything occurring in open court or in chambers that is reported or recorded and so certified by the court reporter or recorder may be included in the statement of facts rather than in a formal bill of exception. A party requesting that all or part of the jury arguments or the voir dire examination of the jury

panel be included in the statement of facts shall pay the cost thereof, which shall be separately listed in the certified bill of costs, and may be taxed in whole or in part by the appellate court against the party to the appeal.

- (11) Formal bills of exception shall be filed in the trial court within sixty days after the judgment is signed or if a timely motion for new trial, motion to modify, request for findings, or motion to reinstate pursuant to Rule 165a has been filed, formal bills of exception shall be filed within ninety days after the judgment is signed. When a formal bill of exception is filed, it may be included in the transcript or in a supplemental transcript.



**[Current Rule]**

**RULE 304. JUDGMENT UPON RECORD**

Judgments rendered upon questions raised upon citations, pleadings, and all other proceedings, constituting the record proper as known at common law, must be entered at the date of each term when pronounced.

**[Proposed New Rule]**

**RULE 304. TIMETABLES**

**(a) Motion for Judgment on Jury Verdict.** A motion for judgment on the jury verdict may be presented at any time before a final judgment has been signed. A motion for judgment on the jury verdict is overruled by operation of law when a final judgment is signed that does not grant the motion.

**(b) Motion for Judgment as a Matter of Law.** A motion for judgment as a matter of law may be presented after the adverse party rests its evidence, or at the close of all the evidence, or after the verdict in a jury case and before judgment, and shall not be considered waived if not presented earlier. A motion for judgment as a matter of law shall not be presented after a final judgment has been signed. A ground in a motion for judgment as a matter of law is overruled by operation of law when a final judgment is signed that does not grant that ground.

**(c) Motion to Modify a Judgment and Motion for New Trial.**

**(1) Time to File.** A motion to modify a judgment and a motion for new trial shall be filed within thirty days after the final judgment is signed. One or more amended or additional motions may be filed without leave of court within thirty days after the final judgment is signed regardless of whether a prior motion containing requests for the same relief has been overruled.

**(2) When Motion Overruled.** If a motion to modify a judgment or a motion for new trial is not determined by order signed within seventy-five days after the final judgment was signed, any such motion shall be considered overruled by operation of law on expiration of that period.

**(3) Special Deadline; Publication.** In a case when judgment has been rendered on citation by publication and the defendant did not appear in

person or by an attorney selected by the defendant, a motion for new trial shall be filed within two years after the final judgment was signed, unless a motion has been previously filed by such defendant or attorney pursuant to paragraph (c)(1).

**(d) Motion to Correct Judgment Record.** A motion to correct the judgment record may be filed at any time after a final judgment is signed, but if the motion is filed within thirty days after the final judgment is signed, the motion shall be considered a motion to modify a judgment filed within thirty days pursuant to paragraph (c) (1).

**(e) Effective Dates and Beginning of Periods**

**(1) Beginning of Periods.** The date a final judgment or appealable order is signed as shown of record determines the beginning of the period during which (i) the court may exercise plenary power to grant a motion to modify, a motion for new trial or a motion to correct the judgment record, a motion to reinstate a case dismissed for want of prosecution and a request for findings of fact and conclusions of law or to vacate a judgment, and (ii) a party may timely file any post-judgment document necessary to preserve the rights of the party on appeal.

**(2) Date to be Shown.** All judgments, decisions, and orders of any kind shall be reduced to writing and signed by the trial judge with the date of signing expressly stated in it. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; the absence of a showing of the date in the record does not invalidate a judgment or an order.

**(3) Notice of Judgment.** When the final judgment or appealable order is signed, the clerk of the court shall immediately give notice of the signing to each party or the party's attorney by first-class mail. Failure to comply with this rule shall not affect the periods mentioned in paragraph (e)(1), except under paragraph (e)(4).

**(4) No Notice of Judgment; Additional Time.** If a party affected by a final judgment or appealable order, or the party's attorney, has not within twenty days after the final judgment or appealable order was signed, received the notice required by paragraph (e)(3) and has not acquired actual knowledge of the signing of the final judgment or appealable order, then all

periods provided in these rules that run from the date of the final judgment or appealable order is signed shall begin for that party on the date that party, or the party's attorney, received notice or acquired actual knowledge of the signing of the final judgment or appealable order, which ever occurred first; provided, however, that in no event shall the periods begin more than ninety days after the final judgment or appealable order was signed.

**(5) Procedure to Gain Additional Time.** To establish the application of paragraph (e)(4), the party adversely affected must file a motion in the trial court stating the date on which the party or the party's attorney first either received a notice of the final judgment or appealable order or acquired actual knowledge of the signing of the final judgment or appealable order and that this date was more than twenty days after the final judgment or appealable order was signed. The trial judge shall promptly set the motion for hearing and after conducting a hearing on the motion, shall find the date the party or the party's attorney first either received a notice of the final judgment or appealable order or acquired actual knowledge of the signing of the final judgment or appealable order and include this finding in a written order.

**(6) Periods Affected by Modified Judgment.** If a judgment is modified in any respect during the period of the trial court's plenary power, all periods provided in these rules that run from the date the final judgment is signed shall run from the time the modified judgment is signed. If a correction to a judgment is made pursuant to Rule 301(e) after expiration of the trial court's plenary power, all periods provided in these rules which run from the date the judgment is signed shall run from the date of the signing of the corrected judgment for any complaint that would not apply to the original judgment.

**(7) Citation by Publication.** For a motion for new trial filed more than thirty days but within two years after the final judgment was signed under paragraph (c)(3) when citation was served by publication; the periods shall be computed as if the judgment were signed on the date of filing the motion.

**(8) Premature Filing.** A prematurely filed motion to modify a judgment or a motion for new trial is effective to preserve the complaints made in the motion and is deemed to have been overruled by operation of law on the date of, but subsequent to, the signing of the judgment the motion

attacks. No motion to modify a judgment or a motion for new trial filed prior to the signing of the final judgment extends the trial court's plenary power provided in Rule 305 or any timetable prescribed in the Texas Rules of Appellate Procedure. A motion filed on the same day as the judgment is signed is not prematurely filed.

**[Current Rule]**

**RULE 305. PROPOSED JUDGMENT**

Any party may prepare and submit a proposed judgment to the court for signature.

Each party who submits a proposed judgment for signature shall serve the proposed judgment on all other parties to the suit who have appeared and remain in the case, in accordance with Rule 21a.

Failure to comply with this rule shall not affect the time for perfecting an appeal.

**[Proposed New Rule]**

**RULE 305. PLENARY POWER OF THE TRIAL COURT**

**(a) Definition.** Plenary power is the complete power of the court to act, within its jurisdiction, according to law or equity, on any issue of procedure or substances as to any party before the court. After the expiration of plenary power, a court may exercise only such power as is expressly authorized by rule or statute.

**(b) Duration.** Regardless of whether an appeal has been perfected, the trial court has plenary power to modify or vacate a judgment or grant a new trial:

(1) within thirty days after the judgment is signed, or

(2) if any party has timely filed a (i) motion for new trial, (ii) motion to modify the judgment, (iii) motion to reinstate a judgment after dismissal for want of prosecution, or (iv) request for findings of fact and conclusions of law, one hundred and five days after the judgment is signed.

**(c) After Expiration.** After expiration of the time prescribed by paragraph (b), the trial court cannot modify or vacate the judgment or grant a new trial, but the court may, after expiration of that time:

(1) correct a clerical error in the record of the judgment and;

(2) sign an order declaring a previous judgment or order to be void because signed after the court's power as prescribed in paragraph (b) has expires;

(3) issue any order or process or entertain any proceeding for

enforcement of the judgment within the time allowed for execution;

(4) file findings of fact and conclusions of law if a timely request for such findings and conclusions has been filed;

(5) entertain and act for sufficient cause on any bill of review filed within the time allowed by law;

(6) grant a new trial for good cause on a motion filed within the time allowed by Rule 304(e)(7) if citation was served by publication;

(7) grant a new trial or modify the judgment within the time allowed by Rule 304(e)(4) when the moving party did not have timely notice or knowledge of the judgment.

**[Current Rule]**

**RULE 306. RECITATION OF JUDGMENT**

The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered.

**[Proposed New Rule]**

**[None – covered by New Rule 300(c)]**

**[Current Rule]**

**RULE 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT**

1. **Beginning of Periods.** The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.
2. **Date to Be Shown.** Judges, attorneys and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order.
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.** 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 a notice of the judgment or acquired



actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.

6. **Nunc Pro Tunc Order.** When a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316, the periods mentioned in paragraph (1) of this rule shall run from the date of signing the corrected judgment with respect of any complaint that would not be applicable to the original document.
7. **When Process Served by Publication.** With respect to a motion for new trial filed more than thirty days after the judgment was signed pursuant to Rule 329 when process has been served by publication, the periods provided by paragraph (1) shall be computed as if the judgment were signed on the date of filing the motion.

**[Proposed New Rule]**

**[Repeal – covered by New Rule 304]**

**[Current Rule]**

**RULE 306c. PREMATURELY FILED DOCUMENTS**

No motion for new trial or request for findings of fact and conclusions of law shall be held ineffective because prematurely filed; but every such motion shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment the motion assails, and every such request for findings of fact and conclusions of law shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment.

**[Proposed New Rule]**

**[Repeal. Partially covered by New Rule 304(e)(8)]**

**[Current Rule]**

**RULE 307. EXCEPTIONS, ETC., TRANSCRIPT**

In non jury cases, where findings of fact and conclusions of law are requested and filed, and in jury cases, where a special verdict is returned, any party claiming that the findings of the court or the jury, as the case may be, do not support the judgment, may have noted in the record an exception to said judgment and thereupon take an appeal or writ of error, where such writ is allowed, without a statement of facts or further exceptions in the transcript, but the transcript in such cases shall contain the conclusions of law and fact or the special verdict and the judgment rendered thereon.

**[Proposed New Rule]**

**[Repeal. Covered by New Rule 303(a)]**

**[Current Rule]**

**RULE 308. COURT SHALL ENFORCE ITS DECREES**

The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 308a. IN SUITS AFFECTING THE PARENT-CHILD  
RELATIONSHIP**

When the court has ordered child support or possession of or access to a child and it is claimed that the order has been violated, the person claiming that a violation has occurred shall make this known to the court. The court may appoint a member of the bar to investigate the claim to determine whether there is reason to believe that the court order has been violated. If the attorney in good faith believes that the order has been violated, the attorney shall take the necessary action as provided under Chapter 14, Family Code. On a finding of a violation, the court may enforce its order as provided in Chapter 14, Family Code.

Except by order of the court, no fee shall be charged by or paid to the attorney representing the claimant. If the court determines that an attorney's fee should be paid, the fee shall be adjudged against the party who violated the court's order. The fee may be assessed as costs of court, or awarded by judgment, or both.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 309. IN FORECLOSURE PROCEEDINGS**

Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiffs lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 310. WRIT OF POSSESSION**

When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 311. ON APPEAL FROM PROBATE COURT**

Judgment on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance.

**[Proposed New Rule]**



**[Current Rule]**

**RULE 312. ON APPEAL FROM JUSTICE COURT**

Judgment on appeal or certiorari from a justice court shall be enforced by the county or district court rendering the judgment.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 313. AGAINST EXECUTORS, ETC.**

A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgment against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 314. CONFESSION OF JUDGMENT**

Any person against whom a cause of action exists may, without process, appear in person or by attorney, and confess judgment therefor in open court as follows:

- (a) A petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed.
- (b) If the judgment is confessed by attorney, the power of attorney shall be filed and its contents be recited in the judgment.
- (c) Every such judgment duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 315.  
REMITTITUR**

Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution shall issue for the balance only of such judgment.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 316. CORRECTION OF CLERICAL MISTAKES IN JUDGMENT  
RECORD**

Clerical mistakes in the record of any judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion therefor has been given to the parties interested in such judgment, as provided in Rule 21 a, and thereafter the execution shall conform to the judgment as amended.

**[Proposed New Rule]**

**[Repeal. Covered by Rule 305]**

**[Current Rule]**

**RULE 320. MOTION AND ACTION OF COURT THEREON**

New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large. When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested. Each motion for new trial shall be in writing and signed by the party or his attorney.

**[Proposed New Rule]**

**[Repeal. Covered by Rule 301-2]**

**[Current Rule]**

**RULE 321. FORM**

Each point relied upon in a motion for new trial or in arrest of judgment shall briefly refer to that part of the ruling of the court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of, in such a way that the objection can be clearly identified and understood by the court.

**[Proposed New Rule]**

**[Repeal. Covered by Rule 302]**

**[Current Rule]**

**RULE 322. GENERALITY TO BE AVOIDED**

Grounds of objections couched in general terms - as that the court erred in its charge, in sustaining or overruling exceptions to the pleadings, and in excluding or admitting evidence, the verdict of the jury is contrary to law, and the like - shall not be considered by the court.

**[Proposed New Rule]**

**[Repeal. Covered by Rule 303]**



**[Current Rule]**

**RULE 324. PREREQUISITES OF APPEAL**

- (a) **Motion for New Trial Not Required.** A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b).
- (b) **Motion for New Trial Required.** A point in a motion for new trial is a prerequisite to the following complaints on appeal:
- (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default;
  - (2) A complaint of factual insufficiency of the evidence to support a jury finding;
  - (3) A complaint that a jury finding is against the overwhelming weight of the evidence;
  - (4) A complaint of inadequacy or excessiveness of the damages found by the jury; or
  - (5) Incurable jury argument if not otherwise ruled on by the trial court.
- (c) **Judgment Notwithstanding Findings; Cross-Points.** When judgment is rendered non obstante verdicto or notwithstanding the findings of a jury on one or more questions, the appellee may bring forward by cross-point contained in his brief filed in the Court of Appeals any ground which would have vitiated the verdict or would have prevented an affirmance of the judgment had one been rendered by the trial court in harmony with the verdict, including
- although not limited to the ground that one or more of the jury's findings have insufficient support in the evidence or are against the overwhelming preponderance of the evidence as a matter of fact, and the ground that the verdict and judgment based thereon should be set aside because of improper argument of counsel.
- The failure to bring forward by cross-points such grounds as would vitiate the verdict shall be deemed a waiver thereof; provided, however, that if a cross-point is upon a ground which requires the taking of evidence in addition to that adduced upon the trial of the cause, it is not necessary that the evidentiary hearing be held until after the appellate court determines that the cause be remanded to consider such a cross-point.

**[Proposed New Rule]**  
**[Repeal.]**

**[Current Rule]**

**RULE 326. NOT MORE THAN TWO**

Not more than two new trials shall be granted either party in the same cause because of insufficiency or weight of the evidence.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 327. FOR JURY MISCONDUCT**

- a. When the ground of a motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury, or that a juror gave an erroneous or incorrect answer on voir dire examination, the court shall hear evidence thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the communication made, or the erroneous or incorrect answer on voir dire examination, be material, and if it reasonably appears from the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party.
- b. A juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict concerning his mental processes in connection therewith, except that a juror may testify whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

**[Proposed New Rule]**

**[Repeal. Covered by Rule 302]**

**[Current Rule]**

**RULE 329. MOTION FOR NEW TRIAL ON JUDGMENT FOLLOWING  
CITATION BY PUBLICATION**

- (a) The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was signed. The parties adversely interested in such judgment shall be cited as in other cases.
- (b) Execution of such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in an amount fixed in accordance with Appellate Rule 47 relating to supersedeas bonds, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.
- (c) If property has been sold under the judgment and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale.
- (d) If the motion is filed more than thirty days after the judgment was signed, the time period shall be computed pursuant to Rule 306a(7).

**[Proposed New Rule]**

**[Repeal. Covered by Rule 302]**

- (c) In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment is not determined by written order signed within

**[Current Rule]**

**RULE 329a. COUNTY COURT CASES**

If a case or other matter is on trial or in the process of hearing when the term of the county court expires, such trial, hearing or other matter may be proceeded with at the next or any subsequent term of court and no motion or plea shall be considered as waived or overruled, because not acted upon at the term of court at which it was filed, but may be acted upon at any time the judge may fix or at which it may have been postponed or continued by agreement of the parties with leave of the court. This subdivision is not applicable to original or amended motions for new trial which are governed by Rule 329b.

**[Proposed New Rule]**

**[Current Rule]**

**RULE 329b. TIME FOR FILING MOTIONS**

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts:

- (a) A motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed.
- (b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within thirty days after the judgment or other order complained of is signed seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period.
- (d) The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.
- (e) If a motion for new trial is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.
- (f) On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; provided that the court may at any time correct a clerical error in the record of a judgment and render judgment nunc pro tunc under Rule 316, and may also sign an order declaring a previous judgment or order to be void because signed after the court's plenary power had expired.
- (g) A motion to modify, correct, or reform a judgment (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court's plenary power and the time for perfecting an appeal in the same manner as a motion for new trial. Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected, or reformed. The overruling of such a motion shall not preclude the filing of a motion for new trial, nor shall the overruling of a

motion for new trial preclude the filing of a motion to modify, correct, or reform.

- (h) If a judgment is modified, corrected or reformed in any respect, the time for appeal shall run from the time the modified, corrected, or reformed judgment is signed, but if a correction is made pursuant to Rule 316 after expiration of the period of plenary power provided by this rule, no complaint shall be heard on appeal that could have been presented in an appeal from the original judgment.

**[Proposed New Rule]**

**[Repeal.]**