

# Memorandum



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**To:** Supreme Court Advisory Committee

**From:** Appellate Rules Subcommittee

**Date:** June 11, 2019

**Re:** SB 891 § 7.02 Notice of Appeal

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## **I. Matter referred to subcommittee**

The Court's May 31, 2019 referral letter and Chairman Babcock's June 3 letter referred the following matter to the appellate rules subcommittee:

**Notice of Appeal.** SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. . . . The statute is effective September 1, 2019.

The "good news" is that the Court's referral letter states that "The Committee has already considered this change." The "bad news" is that the subcommittee and SCAC have mostly, but not completely, considered this change.

## **II. SB 891**

Section 7.02, SB 891, provides:

Subchapter B, Chapter 51, Civil Practice and Remedies Code, is amended by adding Section 51.017 to read as follows:

Sec. 51.017. SERVICE OF NOTICE ON COURT REPORTER. (a) In addition to requirements for service of notice of appeal imposed by Rule 25.1(e), Texas Rules of Appellate Procedure, notice of appeal, including an interlocutory appeal, must be served on each court reporter responsible for preparing the reporter's record.

The new statute applies to all appeals. It is not limited to accelerated appeals or accelerated appeals in parental termination and child protection cases.

## **III. Prior action by subcommittee and SCAC**

By memo dated July 6, 2018, the appellate rules subcommittee proposed amending TRAP 28.4 to require service of the notice of appeal on the court reporter or reporters responsible for preparing the record.

The proposal was discussed at the July 13, 2019 meeting of the SCAC and passed without a formal vote because there was no opposition.

The proposed rule, with floor modifications, read as follows:

Rule 28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(b) Notice of Appeal.

(1) Service of Notice. In addition to requirements for service of notice of appeal imposed in Rule 25.1(e), the notice of appeal must be served on the court reporter or court reporters responsible for preparing the reporter's record.

(2) Trial Court Clerk's Duties. In addition to the responsibility imposed on the trial court clerk in Rule 25.1(f), the trial court clerk must immediately send a copy of the notice of appeal to the judge who tried the case.

~~(b)~~ (c) Appellate Record. [text unchanged]

~~(e)~~ (d) Remand for New Trial. [text unchanged]

The proposed rule, because of its placement, was limited to accelerated appeals in parental termination and child protection cases and thus does not fully satisfy the new statutory mandate.

#### IV. Proposed rule changes

To effectuate the statute, TRAP 25.1(e) and (f) should be amended as follows:

*(e) Service of Notice.* The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. The notice of appeal must also be served on each court reporter<sup>1</sup> responsible for preparing the reporter's record.

*(f) Trial Court Clerk's Duties.* The trial court clerk must immediately send a copy of the notice of appeal to the appellate court clerk, to the trial judge, and to the each court reporter or reporters responsible for preparing the reporter's record.<sup>2</sup>

Comment to 2019 change. Additional service and notice obligations for the notice of appeal are for administrative purposes and do not affect the appellate court's jurisdiction.<sup>3</sup>

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<sup>1</sup> One member of the subcommittee has suggested adding the phrase "if any" to reflect that there may be no reporter's record in certain appeals because none was made. The issue is whether to stray from the language of the new statute.

<sup>2</sup> The last part of 25.1(f) requiring the clerk to forward notice to the reporter is redundant in light of the obligation to serve the court reporter. The subcommittee, on balance, decided to leave it in to further ensure prompt notice to the court reporter.

<sup>3</sup> Nothing in the new statute indicates the service requirement is jurisdictional. This language had been recommended by the subcommittee last July in the more limited proposed rule to ensure that courts of appeals do not dismiss appeals based on a failure to serve a court reporter. The comment may not be necessary.