



---

**To:** Supreme Court Advisory Committee

**From:** Appellate Rules Subcommittee

**Memorandum**

**Date:** June 14, 2023

**Re:** June 3, 2023 Referral Letter relating to HB 4381 and TRAP 24.2 alternate security

---

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

**Suspension of Money Judgment Pending Appeal.** Civil Practice and Remedies Code § 52.006 and Texas Rule of Appellate Procedure 24.2(a)(1) govern the amount of a supersedeas bond when the judgment is for money. HB 4381, by adding Civil Procedure and Remedy Code § 52.007, requires a court to allow a judgment debtor worth less than \$10 million to post “alternative security with value sufficient to secure the judgment” if the judgment debtor shows that the amount required by CPRC § 52.006 and TRAP 24.2(a)(1) would “require the judgment debtor to substantially liquidate the judgment debtor’s interests in real or personal property necessary to normal course of the judgement debtor’s business.” The Committee should consider whether Texas Rule of Appellate Procedure 24.2 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

## **II. Relevant materials**

Attached is a copy of HB 4381.

## **III. Subcommittee recommendation**

The Subcommittee recommends

- adding a new subsection (e) to TRAP 24.2 reflecting this new alternative security procedure, and
- modifying TRAP 24.1(a)(4) and 24.2(c)(1) to reflect this addition.

#### IV. Discussion

This statutory alternative security provision is not a modification of a prior mechanism; instead, it is a new mechanism for a particular circumstance. After the statutory 50% net worth/\$25 million supersedeas cap was enacted in 2003 and became section 52.006 of the Civil Practice & Remedies Code, the statutory cap language was incorporated in TRAP 24.2. For consistency and ease of reference for attorneys, the subcommittee recommends inclusion of this new statutory mechanism in TRAP 24.2 as new subsection (e):

**(e) Alternative Security in Certain Cases.**

(1) This subsection (e) applies only to a judgment debtor with a net worth of less than \$10 million.

(2) On a showing by the judgment debtor that posting security in the amount required under 24.2(a)(1) would require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to the normal course of the judgment debtor's business, the trial court shall allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.

(3) During an appeal, the judgment debtor shall continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.

(4) If an appellate court reduces the amount of the judgment that the trial court used to set security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination of the amount of security required to suspend enforcement of a judgment under Rule 24.

The subcommittee recommends this modification to TRAP 24.1(a) (4):

(4) providing alternate security **under (e) or as** ordered by the court.

The subcommittee recommends this modification to the first sentence of TRAP 24.2(c)(1):

**(c) Determination of Net Worth.**

1 Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit or security under (a)(1)(A) **or (e)** in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information

concerning the debtor's assets and liabilities from which net worth can be ascertained.

The subcommittee invites further discussion and requests input on a related question. There are a number of potential areas for uncertainty and litigation based on potentially unclear wording used in HB 4381. Among those areas identified by the subcommittee are the following: (1) are financial instruments or investments “personal property”; (2) what constitutes a “debtor’s business”; (3) the word “shall” can be ambiguous depending on the context because it sometimes means “must” and other times means “may”; (4) what is the meaning of “a value sufficient to secure the judgment”; (5) who makes the “redetermination”; and (6) does the “court shall allow” language require a court order?

For related inquiries, such as TRAP 24.2(c)’s procedure to determine “net worth,” the rule does not attempt to set out a comprehensive definition of “net worth” and related concepts such as “liabilities.” The more precise meaning of “net worth,” which has nuances depending on accounting principles and the circumstances involved in any given case, has been refined in case law applying TRAP 24.2(c). A question for discussion by the SCAC is whether the preferred approach is to incorporate HB 4381’s language verbatim and leave potential uncertainties to be resolved through the litigation process; or, instead, to supplement the statutory language in the rule in an effort to provide greater clarity for courts and litigants.