

# Supreme Court of Texas

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Misc. Docket No. 23-9106

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## Preliminary Approval of Texas Rule of Appellate Procedure 34.5a and of Amendments to Texas Rules of Appellate Procedure 35.3 and 38.6

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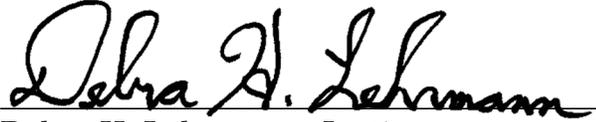
**ORDERED** that:

1. The Court invites public comments on proposed new Texas Rule of Appellate Procedure 34.5a and amendments to Texas Rules of Appellate Procedure 35.3 and 38.6.
2. To effectuate the Act of May 28, 2023, 88th Leg., R.S., ch. 861 (H.B. 3474, codified in TEX. CIV. PRAC. & REM. CODE § 51.018), new Rule 34.5a and the amendments to Rules 35.3 and 38.6 are effective January 1, 2024. But changes may be made in response to public comments. The Court requests public comments be submitted in writing to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov) by April 1.
3. New Rule 34.5a is demonstrated in clean form, and the amendments to Rules 35.3 and 38.6 are demonstrated in redline form.
4. The new rule and amendments apply only when a party files a notice of appeal on or after January 1, 2024.
5. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of this Order for publication in the *Texas Register*.

Dated: December 18, 2023.



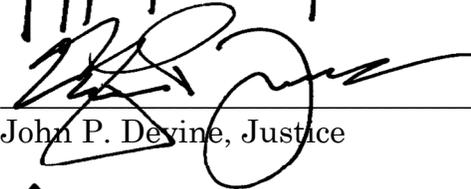
Nathan L. Hecht, Chief Justice



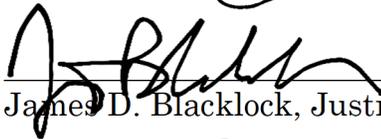
Debra H. Lehrmann, Justice



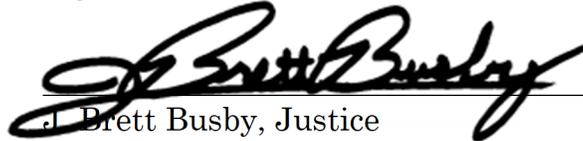
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



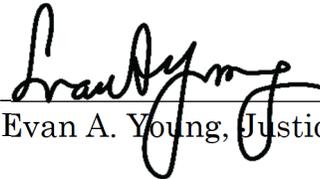
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

## TEXAS RULES OF APPELLATE PROCEDURE

### Rule 34. Appellate Record (Clean Version)

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#### 34.5a Appendix in Lieu of Clerk's Record in a Civil Case

- (a) *Notice of Election.* Within 10 days after the date that an appellant files a notice of appeal for a civil suit, an appellant may file a notice of election with the trial court and the court of appeals stating that the appellant will file an appendix that replaces the clerk's record for the appeal.
- (b) *Time to File Original Appendix.* The appellant filing a notice of election under (a) must file the appendix with the appellant's brief. Except by order of the court under Rule 38.6(d), the brief and appendix must be filed within 30 days—or 20 days in an accelerated appeal—after the later of:
  - (1) the date the appellant filed the notice of election under (a); or
  - (2) the date the reporter's record, if any, is filed with the court of appeals.
- (c) *Supplemental or Joint Appendices.* If the appellant files an appendix under (b), any other party may file a supplemental appendix with that party's brief. The parties may agree under Rule 6.6 to file a joint appendix.
- (d) *Court-Directed Supplement.* The court of appeals may direct the appellant to file a supplemental appendix containing items described by the court of appeals. If the appellant fails to supplement as requested, and the record fails to establish the court of appeals' jurisdiction, the court of appeals may dismiss the appeal. In cases where the court of appeals has jurisdiction, and the appellant fails to supplement as requested, the court of appeals may presume that the missing items support the trial court's judgment.
- (e) *Contents of Original Appendix.* The appendix filed under (b) must contain a copy of:
  - (1) each document required by Rule 34.5(a) for a civil case; and

- (2) any other item in the record and referenced in the appellant's brief.
- (f) *Contents of All Appendices.* When available, the contents of an appendix must be file-stamped. An appendix must not contain a document that was not filed with the trial court, except:
  - (1) if the document was issued by the trial court; or
  - (2) by agreement of the parties under Rule 6.6.
- (g) *Filing Requirements for All Appendices.* An appendix must be filed separately from any other document, and the pages must be consecutively numbered. An appendix must meet the applicable filing requirements of Rules 9.4, 9.8, and 9.9. A nonconforming appendix is subject to court action under Rule 9.4(k). A conforming appendix becomes a part of the appellate record under Rule 34.1
- (h) *No Clerk's Record.* A court clerk must not prepare or file a clerk's record or assess a fee for preparing a clerk's record if a party files an appendix under this rule.

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### Notes and Comments

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Comment to 2024 Change: New Rule 34.5a is added to implement Texas Civil Practice and Remedies Code section 51.018. It allows the parties in a civil case to file appendices in lieu of a clerk's record and applies only when a party files a notice of appeal on or after January 1, 2024.

### **Rule 35. Time to File Record; Responsibility for Filing Record (Redline Version)**

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#### **35.3. Responsibility for Filing Record**

- (a) *Clerk's Record.* Except when an appendix is filed under Rule 34.5a, Tthe trial court clerk is responsible for preparing, certifying, and timely filing the clerk's record if:

- (1) a notice of appeal has been filed, and in criminal proceedings, the trial court has certified the defendant's right of appeal, as required by Rule 25.2(d); and
- (2) the party responsible for paying for the preparation of the clerk's record has paid the clerk's fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee.

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### **Rule 38. Requisites of Briefs (Redline Version)**

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#### **38.6. Time to File Briefs**

- (a) *Appellant's Filing Date.* Except in a habeas corpus or bail appeal, which is governed by Rule 31, or when an appendix is filed under Rule 34.5a, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:
  - (1) the date the clerk's record was filed; or
  - (2) the date the reporter's record was filed.

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