

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 16-9122

## FINAL APPROVAL OF AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE AND THE TEXAS RULES OF APPELLATE PROCEDURE AND OF A FORM STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS

**ORDERED** that:

1. By order dated May 16, 2016, in Misc. Docket No. 16-9056, the Supreme Court of Texas approved amendments to Texas Rules of Civil Procedure 145 and 502.3 and Texas Rules of Appellate Procedure 20.1, 25, and 32. The Court also approved a form Statement of Inability to Afford Payment of Court Costs and invited public comment on the amendments and the form.
2. The Court has reviewed the public comments and made revisions to the rules and to the form. The final versions are set forth in this order.
3. The amendments are effective September 1, 2016. The amended rules apply to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1.
4. The final versions of Texas Rules of Civil Procedure 145 and 502.3 are set forth in clean form. The Court did not make any additional changes to Rule 502.3 during the comment period.
5. The Court has approved amendments to Texas Rules of Civil Procedure 126, 501.2, 502.4, 502.6, 504.1, 506.1, 506.4, and 510.7. The amended version of Rule 126 is set forth in clean form. The amendments to Rules 501.2, 502.4, 502.6, 504.1, 506.4, and 510.7 are demonstrated in redline.
6. The final versions of Texas Rules of Appellate Procedure 20.1, 25.1, and 32.1 are set forth in clean form. The Court did not make any additional changes to Rules 25.1 or 32.1 during the comment period.
7. The Court has approved amendments to Texas Rule of Appellate Procedure 43.4. The amended rule is set forth in clean form.
8. The final version of the Statement of Inability to Afford Payment of Court Costs is attached.

9. 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 the order for publication in the *Texas Register*.

Dated: August 31, 2016.



Nathan L. Hecht, Chief Justice



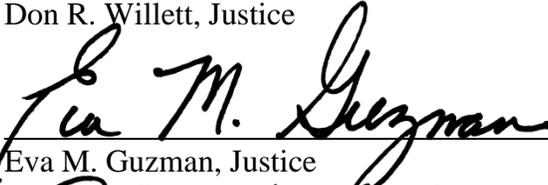
Paul W. Green, Justice



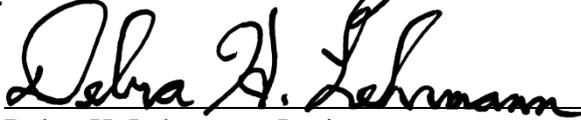
Phil Johnson, Justice



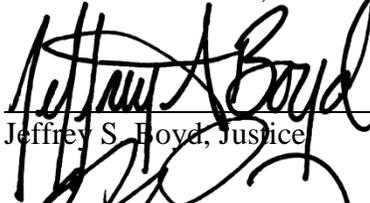
Don R. Willett, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

## **Texas Rule of Civil Procedure 126—Clean Version of Amended Rule**

### **Rule 126. Fee for Service of Process in a County Other Than in the County of Suit**

- (a) *General Rule: Fee Due Before Service.* A sheriff or constable may require payment before serving process in a case pending in a county other than the county in which the sheriff or constable is an officer.
  
- (b) *Exception: Statement of Inability to Afford Payment of Court Costs Filed.* If a Statement of Inability to Afford Payment of Court Costs has been filed in a case in which the declarant requests service of process in a county other than in the county of suit, the clerk must indicate on the document to be served that a Statement of Inability to Afford Payment of Court Costs has been filed. The sheriff or constable must execute the service without demanding payment.

## Texas Rule of Civil Procedure 145—Clean Version of Final Amended Rule

### Rule 145. Payment of Costs Not Required

- (a) *General Rule.* A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, “declarant” means the party filing the Statement.
- (b) *Supreme Court Form; Clerk to Provide.* The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.
- (c) *Costs Defined.* “Costs” mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.
- (d) *Defects.* The clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect is a ground for refusing to file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court—on its own motion or on motion of the clerk or any party—may direct the declarant to correct or clarify the Statement.
- (e) *Evidence of Inability to Afford Costs Required.* The Statement must say that the declarant cannot afford to pay costs. The declarant must provide in the Statement, and, if available, in attachments to the Statement, evidence of the declarant’s inability to afford costs, such as evidence that the declarant:
  - (1) receives benefits from a government entitlement program, eligibility for which is dependent on the recipient’s means;
  - (2) is being represented in the case by an attorney who is providing free legal services to the declarant, without contingency, through:
    - (A) a provider funded by the Texas Access to Justice Foundation;
    - (B) a provider funded by the Legal Services Corporation; or

- (C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services;
  - (3) has applied for free legal services for the case through a provider listed in (e)(2) and was determined to be financially eligible but was declined representation; or
  - (4) does not have funds to afford payment of costs.
- (f) *Requirement to Pay Costs Notwithstanding Statement.* The court may order the declarant to pay costs only as follows:
- (1) *On Motion by the Clerk or a Party.* The clerk or any party may move to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief:
    - (A) that the Statement was materially false when it was made; or
    - (B) that because of changed circumstances, the Statement is no longer true in material respects.
  - (2) *On Motion by the Attorney Ad Litem for a Parent in Certain Cases.* An attorney ad litem appointed to represent a parent under Section 107.013, Family Code, may move to require the parent to pay costs only if the motion complies with (f)(1).
  - (3) *On Motion by the Court Reporter.* When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to require the declarant to prove the inability to afford costs.
  - (4) *On the Court's Own Motion.* Whenever evidence comes before the court that the declarant may be able to afford costs, or when an officer or professional must be appointed in the case, the court may require the declarant to prove the inability to afford costs.
  - (5) *Notice and Hearing.* The declarant may not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

- (6) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.
  - (7) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.
- (g) *Review of Trial Court Order.*
- (1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.
  - (2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.
  - (3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.
  - (4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.
- (h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order under (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person

cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant’s claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001—is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant’s circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter’s record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

## Texas Rule of Civil Procedure 501.2—Redline of Amendments

### Rule 501.2. Service of Citation

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- (c) *Service Fees.* A plaintiff must pay all fees for service unless the plaintiff has filed a ~~sworn s~~Statement of ~~I~~inability to Afford Payment of Court Costs ~~pay the fees~~ with the court. If the plaintiff has filed a ~~sworn s~~Statement ~~of inability to pay~~, the plaintiff must arrange for the citation to be served by a sheriff, constable, or court clerk.

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## Texas Rule of Civil Procedure 502.3—Clean Version of Amended Rule

### Rule 502.3. Fees; Inability to Afford Fees

- (a) *Fees and Statement of Inability to Afford Payment of Court Costs.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a Statement of Inability to Afford Payment of Court Costs. The Statement must either be sworn to before a notary or made under penalty of perjury. Upon filing the Statement, the clerk must docket the action, issue citation, and provide any other customary services.
- (b) *Supreme Court Form; Contents of Statement.* The plaintiff must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.
- (c) *Certificate of Legal-Aid Provider.* If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly or by referral from a legal-aid provider described in Rule 145(e)(2), the attorney may file a certificate confirming that the provider screened the party for eligibility under the income and asset guidelines established by the provider. A Statement that is accompanied by the certificate of a legal-aid provider may not be contested under (d).
- (d) *Contest.* Unless a certificate is filed under (c), the defendant may file a contest of the Statement at any time within 7 days after the day the defendant's answer is due. If the Statement attests to receipt of government entitlement based on indigence, the Statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiff's ability to afford the fees. At the hearing, the burden is on the plaintiff to prove the inability to afford fees. The judge may, regardless of whether the defendant contests the Statement, examine the Statement and conduct a hearing to determine the plaintiff's ability to afford fees. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

## Texas Rule of Civil Procedure 502.4—Redline of Amendments

### Rule 502.4. Venue—Where a Lawsuit May Be Brought

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- (d) *Motion to Transfer Venue.* If a plaintiff files suit in an improper venue, a defendant may challenge the venue selected by filing a motion to transfer venue. The motion must be filed before trial, no later than 21 days after the day the defendant's answer is filed, and must contain a sworn statement that the venue chosen by the plaintiff is improper and a specific county and precinct of proper venue to which transfer is sought. If the defendant fails to name a county and precinct, the court must instruct the defendant to do so and allow the defendant 7 days to cure the defect. If the defendant fails to correct the defect, the motion will be denied, and the case will proceed in the county and precinct where it was originally filed.

- (1) *Procedure.*

\* \* \*

- (G) *Order.* An order granting a motion to transfer venue must state the reason for the transfer and the name of the court to which the transfer is made. When such an order of transfer is made, the judge who issued the order must immediately make out a true and correct transcript of all the entries made on the docket in the case, certify the transcript, and send the transcript, with a certified copy of the bill of costs and the original papers in the case, to the court in the precinct to which the case has been transferred. The court receiving the case must then notify the plaintiff that the case has been received and, if the case is transferred to a different county, that the plaintiff has 14 days after receiving the notice to pay the filing fee in the new court, or file a ~~sworn s~~Statement of ~~i~~Inability to ~~Afford p~~Payment of Court Costs. The plaintiff is not entitled to a refund of any fees already paid. Failure to pay the fee or file a ~~sworn s~~Statement of ~~of inability to pay~~ will result in dismissal of the case without prejudice.

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## Texas Rule of Civil Procedure 502.6—Redline of Amendments

### Rule 502.6. Counterclaim; Cross-Claim; Third Party Claim

- (a) *Counterclaim.* A defendant may file a petition stating as a counterclaim any claim against a plaintiff that is within the jurisdiction of the justice court, whether or not related to the claims in the plaintiff's petition. The defendant must file a counterclaim petition as provided in Rule 502.2, and must pay a filing fee or provide a ~~sworn s~~Statement of ~~I~~nability to ~~Afford Payment of Court Costs~~~~pay the fees~~. The court need not generate a citation for a counterclaim and no answer to the counterclaim need be filed. The defendant must serve a copy of the counterclaim as provided by Rule 501.4.
- (b) *Cross-Claim.* A plaintiff seeking relief against another plaintiff, or a defendant seeking relief against another defendant may file a cross-claim. The filing party must file a cross-claim petition as provided in Rule 502.2, and must pay a filing fee or provide a ~~sworn s~~Statement of ~~I~~nability to ~~Afford Payment of Court Costs~~~~pay the fees~~. A citation must be issued and served as provided by Rule 501.2 on any party that has not yet filed a petition or an answer, as appropriate. If the party filed against has filed a petition or an answer, the filing party must serve the cross-claim as provided by Rule 501.4.
- (c) *Third Party Claim.* A defendant seeking to bring another party into a lawsuit who may be liable for all or part of the plaintiff's claim against the defendant may file a petition as provided in Rule 502.2, and must pay a filing fee or provide a ~~sworn s~~Statement of ~~I~~nability to ~~Afford Payment of Court Costs~~~~pay the fees~~. A citation must be issued and served as provided by Rule 501.2.

## Texas Rule of Civil Procedure 504.1—Redline of Amendments

### Rule 504.1. Jury Trial Demanded

- (a) *Demand.* Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause.
- (b) *Jury Fee.* Unless otherwise provided by law, a party demanding a jury must pay a fee of \$22.00 or must file a ~~sworn s~~Statement of ~~i~~nability to ~~Afford p~~Payment of ~~Court Costs~~~~the fee~~ at or before the time the party files a written request for a jury.
- (c) *Withdrawal of Demand.* If a party who demands a jury and pays the fee withdraws the demand, the case will remain on the jury docket unless all other parties present agree to try the case without a jury. A party that withdraws its jury demand is not entitled to a refund of the jury fee.
- (d) *No Demand.* If no party timely demands a jury and pays the fee, the judge will try the case without a jury.

## Texas Rule of Civil Procedure 506.1—Redline of Amendments

### Rule 506.1. Appeal

- (a) *How Taken; Time.* A party may appeal a judgment by filing a bond, making a cash deposit, or filing a ~~sworn~~SStatement of ~~I~~nability to Afford ~~p~~Payment of Court Costs with the justice court within 21 days after the judgment is signed or the motion to reinstate, motion to set aside, or motion for new trial, if any, is denied.
- (b) *Amount of Bond; Sureties; Terms.* A plaintiff must file a \$500 bond. A defendant must file a bond in an amount equal to twice the amount of the judgment. The bond must be supported by a surety or sureties approved by the judge. The bond must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.
- (c) *Cash Deposit in Lieu of Bond.* In lieu of filing a bond, an appellant may deposit with the clerk of the court cash in the amount required of the bond. The deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.
- (d) ~~Sworn~~ Statement of Inability to Afford Payment of Court Costs.
- (1) Filing. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a ~~sworn~~SStatement of ~~I~~nability to Afford ~~p~~Payment of Court Costs. The Sstatement must be on the form approved by the Supreme Court or include the information required by the Court-approved form and meet the requirements of Rule 502.3(b) and may be the same one that was filed with the petition.
  - (2) Contest. The Sstatement may be contested as provided in Rule 502.3(d) within 7 days after the opposing party receives notice that the Sstatement was filed.
  - (3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 7 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 14 days and hear the contest de novo, as if there had been no previous hearing, and if the appeal is granted, must direct the

justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.

- (4) **If No Appeal or If Appeal Overruled.** If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within five days, post an appeal bond or make a cash deposit in compliance with this rule.
- (e) *Notice to Other Parties Required.* If a ~~s~~Statement of ~~i~~Inability to Afford pPayment of Court Costs is filed, the court must provide notice to all other parties that the ~~s~~Statement was filed no later than the next business day. Within 7 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.
- (f) *No Default on Appeal Without Compliance With Rule.* The county court to which an appeal is taken must not render default judgment against any party without first determining that the appellant has fully complied with this rule.
- (g) *No Dismissal of Appeal Without Opportunity for Correction.* An appeal must not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing the appellant, after 7 days' notice from the court, the opportunity to correct such defect.
- (h) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or ~~s~~Statement of ~~i~~Inability to Afford pPayment of Court Costs is filed in accordance with this rule.
- (i) *Costs.* The appellant must pay the costs on appeal to a county court in accordance with Rule 143a.

## Texas Rule of Civil Procedure 506.4—Redline of Amendments

### Rule 506.4. Writ of Certiorari

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- (c) *Bond, Cash Deposit, or Sworn Statement of Indigency to Pay Required.* If the application is granted, a writ of certiorari must not issue until the applicant has filed a bond, made a cash deposit, or filed a ~~sworn~~ sStatement of ~~indigency~~ Inability to Afford Payment of Court Costs that complies with Rule 145.
- (d) *Time for Filing.* An application for writ of certiorari must be filed within 90 days after the date the final judgment is signed.
- (e) *Contents of Writ.* The writ of certiorari must command the justice court to immediately make and certify a copy of the entries in the case on the docket, and immediately transmit the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, to the proper court.
- (f) *Clerk to Issue Writ and Citation.* When the application is granted and the bond, cash deposit, or ~~sworn~~ sStatement of ~~indigency~~ Inability to Afford Payment of Court Costs ~~has~~ ve been filed, the clerk must issue a writ of certiorari to the justice court and citation to the adverse party.

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## Texas Rule of Civil Procedure 510.7—Redline of Amendments

### Rule 510.7. Trial

- (a) *Trial.* An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.
- (b) *Jury Trial Demanded.* Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a ~~sworn~~ Statement of Inability to Afford pPayment of Court Costs ~~the jury fee~~. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.
- (c) *Limit on Postponement.* Trial in an eviction case must not be postponed for more than 7 days total unless both parties agree in writing.

## Texas Rule of Civil Procedure 510.9—Redline of Amendments

### Rule 510.9. Appeal

- (a) *How Taken; Time.* A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a ~~sworn~~ SStatement of Inability to Afford payment of Court Costs with the justice court within 5 days after the judgment is signed.
- (b) *Amount of Security; Terms.* The justice court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.
- (c) ~~Sworn~~ Statement of Inability to Afford Payment of Court Costs.
- (1) *Filing.* An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a ~~sworn~~ SStatement of Inability to Afford payment of Court Costs. The Sstatement must ~~meet the requirements of Rule 502.3(b)~~ be on the form approved by the Supreme Court or include the information required by the Court-approved form.
- (2) *Contest.* The Sstatement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the Sstatement was filed.
- (3) *Appeal If Contest Sustained.* If the contest is sustained, the appellant may appeal that decision by filing notice with the justice court within 5 days of that court's written order. The justice court must then forward all related documents to the county court for resolution. The county court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the clerk of the county court the transcript, records, and papers of the case, as provided in these rules.
- (4) *If No Appeal or If Appeal Overruled.* If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.
- (5) *Payment of Rent in Nonpayment of Rent Appeals.*

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a ~~sworn~~ sStatement of Inability to Afford payment of Court Costs, the justice court must provide to the defendant a written notice at the time the Statement is filed that contains the following information in bold or conspicuous type:

- (i) the amount of the initial deposit of rent, equal to one rental period's rent under the terms of the rental agreement, that the defendant must pay into the justice court registry;
- (ii) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
- (iii) the calendar date by which the initial deposit must be paid into the justice court registry, which must be within 5 days of the date the ~~sworn~~ sStatement ~~of inability to pay~~ is filed; and
- (iv) a statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing a writ of possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a ~~sworn~~ sStatement of Inability to Afford payment of Court Costs is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

- (i) Within 5 days of the date that the defendant files a ~~sworn~~ sStatement of Inability to Afford payment of Court Costs, it must pay into the justice court registry the amount set forth in the notice provided at the time the defendant filed the Statement. If the defendant was provided with notice and fails to pay the designated amount into the justice court registry within 5 days, and the transcript has not been transmitted to the county clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a writ of possession, which the justice court must issue immediately and without hearing.
- (ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into

the county court registry within 5 days of the rental due date under the terms of the rental agreement.

- (iii) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the justice court to be paid during appeal. Either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the justice court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the justice court's ruling at the hearing, the defendant is required to pay only the portion claimed to be owed by the defendant until the issue is tried in county court.
- (iv) If the defendant fails to pay the designated amount into the court registry within the time limits prescribed by these rules, the plaintiff may file a sworn motion that the defendant is in default in county court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue a writ of possession.
- (v) The plaintiff may withdraw any or all rent in the county court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing. (vi) All hearings and motions under this subparagraph are entitled to precedence in the county court.

(d) *Notice to Other Parties Required.* If a ~~s~~Statement of ~~I~~nability to ~~A~~fford ~~p~~ayment of ~~C~~ourt Costs is filed, the court must provide notice to all other parties that the ~~S~~statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or ~~s~~Statement of ~~I~~nability to ~~A~~fford ~~p~~ayment of ~~C~~ourt Costs is filed in accordance with this rule.

## Texas Rule of Appellate Procedure 20.1—Clean Version of Final Amended Rule

### 20.1 Civil Cases

- (a) *Costs Defined.* In this rule, “costs” mean filing fees charged by the appellate court. Fees charged for preparation of the appellate record are governed by Texas Rule of Civil Procedure 145.
- (b) *When a Statement Was Filed in the Trial Court.*
- (1) *General Rule; Status in Trial Court Carries Forward.* A party who filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to pay costs in the appellate court unless the trial court overruled the party’s claim of indigence in an order that complies with Texas Rule of Civil Procedure 145. A party is not required to pay costs in the appellate court if the trial court ordered the party to pay partial costs or to pay costs in installments.
  - (2) *Establishing the Right to Proceed Under the General Rule.* To establish the right to proceed without payment of costs under (1), a party must communicate to the appellate court clerk in writing that the party is presumed indigent under this rule. In an appeal under Section Two of these rules, the applicability of the presumption should be stated in the notice of appeal and in the docketing statement.
  - (3) *Exception; Material Change in Circumstances.* An appellate court may permit a party who is not entitled to proceed under (1) to proceed without payment of costs if the party establishes that the party’s financial circumstances have materially changed since the date of the trial court’s order under Texas Rule of Civil Procedure 145.
    - (A) *Requirements.* The party must file a motion in the appellate court alleging that the party’s financial circumstances have materially changed since the date of the trial court’s order and a current Statement of Inability to Afford Payment of Court Costs that complies with Texas Rule of Civil Procedure 145. The Statement that was filed in the trial court does not meet the requirements of this rule.
    - (B) *Action by Appellate Court.* The appellate court may decide the motion based on the record or refer the motion to the trial court with instructions to hear evidence and issue findings of fact. If a motion is referred to the trial court, the appellate court must review the trial

court's findings and the record of the hearing before ruling on the motion.

- (c) *When No Statement Was Filed in the Trial Court.* An appellate court may permit a party who did not file a Statement of Inability to Afford Payment of Court Costs in the trial court to proceed without payment of costs. The court may require the party to file a Statement in the appellate court. If the court denies the party's request to proceed without payment of costs, it must do so in a written order.

Comment to 2016 Change:

The rule has been rewritten so that it only governs filing fees and any other fee charged by the appellate court. Texas Rule of Civil Procedure 145 governs a party's claim that the party is unable to afford costs for preparation of the appellate record.

Because appellate filing fees are minimal, a party that filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to file a new Statement in the appellate court unless the trial court made affirmative findings under Texas Rule of Civil Procedure 145 that the party is able to afford all court costs and to pay those costs as they are incurred. Furthermore, because a determination of indigence by the trial court carries forward to appeal in all cases, Family Code section 107.013 is satisfied.

Experience has shown that, in most cases, a party's financial circumstances do not change substantially between the trial court proceedings and the appellate court proceedings. Nonetheless, (b)(3) permits a party whom the trial court determined is able to afford all costs to demonstrate to the appellate court that the party's circumstances have changed since the trial court's ruling and that the party is unable to afford appellate filing fees.

## Texas Rule of Appellate Procedure 25.1—Clean Version of Amended Rule

### 25.1. Civil Cases

\* \* \*

(d) *Contents of Notice.* The notice of appeal must:

- (1) identify the trial court and state the case's trial court number and style;
- (2) state the date of the judgment or order appealed from;
- (3) state that the party desires to appeal;
- (4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- (5) state the name of each party filing the notice;
- (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;
- (7) in a restricted appeal:
  - (A) state that the appellant is a party affected by the trial court's judgment but did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of;
  - (B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
  - (C) be verified by the appellant if the appellant does not have counsel.
- (8) state, if applicable, that the appellant is presumed indigent and may proceed without paying costs under Rule 20.1.

\* \* \*

## **Texas Rule of Appellate Procedure 32—Clean Version of Amended Rule**

### **32.1. Civil Cases**

Promptly upon filing the notice of appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

\* \* \*

- (k) if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:
  - (1) the date that the Statement was filed;
  - (2) the date of filing of any motion challenging the Statement;
  - (3) the date of any hearing on the appellant's ability to afford costs; and
  - (4) if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed;
- (l) whether the appellant has filed or will file a supersedeas bond; and
- (m) any other information the appellate court requires.

## **Texas Rule of Appellate Procedure 43.4—Clean Version of Amended Rule**

### **43.4. Judgment for Costs in Civil Cases**

The court of appeals' judgment should award to the prevailing party costs incurred by that party related to the appeal, including filing fees in the court of appeals and costs for preparation of the record. The court of appeals may tax costs otherwise as required by law or for good cause. But the judgment must not require the payment of costs by a party who was entitled to proceed without payment of costs under Rule 20.1, and a provision in the judgment purporting to do so is void.

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**



Cause Number: \_\_\_\_\_  
*(The Clerk's office will fill in the Cause Number when you file this form)*

Plaintiff: \_\_\_\_\_  
*(Print first and last name of the person filing the lawsuit.)*

And

In the *(check one):*  
\_\_\_\_\_ Court Number  
 District Court  
 County Court / County Court at Law  
 Justice Court

Defendant: \_\_\_\_\_  
*(Print first and last name of the person being sued.)*

\_\_\_\_\_ Texas  
County

**Statement of Inability to Afford Payment of Court Costs or an Appeal Bond**

**1. Your Information**

My full legal name is: \_\_\_\_\_ My date of birth is: \_\_\_\_/\_\_\_\_/\_\_\_\_  
*First Middle Last Month/Day/Year*

My address is: *(Home)* \_\_\_\_\_  
*(Mailing)* \_\_\_\_\_

My phone number: \_\_\_\_\_ My email: \_\_\_\_\_

About my **dependents**: "The people who depend on me financially are listed below."

<i>Name</i>	<i>Age</i>	<i>Relationship to Me</i>
1 _____	_____	_____
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____

**2. Are you represented by Legal Aid?**

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.'

**-or-**

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

**or-**

I am not represented by legal aid. I did not apply for representation by legal aid.

**3. Do you receive public benefits?**

I do not receive needs-based public benefits. - or -

I receive these **public benefits/government entitlements** that are based on indigency:

*(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)*

- Food stamps/SNAP       TANF     Medicaid     CHIP     SSI     WIC     AABD
- Public Housing or Section 8 Housing     Low-Income Energy Assistance     Emergency Assistance
- Telephone Lifeline       Community Care via DADS       LIS in Medicare ("Extra Help")
- Needs-based VA Pension     Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: \_\_\_\_\_

**4. What is your monthly income and income sources?**

"I get this monthly income:

\$ \_\_\_\_\_ in monthly wages. I work as a \_\_\_\_\_ for \_\_\_\_\_.  
Your job title Your employer

\$ \_\_\_\_\_ in monthly unemployment. I have been unemployed since (date) \_\_\_\_\_.

\$ \_\_\_\_\_ in public benefits per month.

\$ \_\_\_\_\_ from other people in my household each month: (List only if other members contribute to your household income.)

\$ \_\_\_\_\_ from  Retirement/Pension  Tips, bonuses  Disability  Worker's Comp  
 Social Security  Military Housing  Dividends, interest, royalties  
 Child/spousal support  
 My spouse's income or income from another member of my household (If available)

\$ \_\_\_\_\_ from other jobs/sources of income. (Describe) \_\_\_\_\_

\$ \_\_\_\_\_ is my **total monthly** income.

**5. What is the value of your property?**

"My <b>property</b> includes:	<b>Value*</b>
Cash	\$ _____
Bank accounts, other financial assets	\$ _____
_____	\$ _____
_____	\$ _____
Vehicles (cars, boats) <small>(make and year)</small>	\$ _____
_____	\$ _____
_____	\$ _____
Other property (like jewelry, stocks, land, another house, etc.)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total value of property</b>	<b>→ \$ _____</b>

**6. What are your monthly expenses?**

"My <b>monthly expenses</b> are:	<b>Amount</b>
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <small>(List)</small>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total Monthly Expenses</b>	<b>→ \$ _____</b>

\*The value is the amount the item would sell for less the amount you still owe on it, if anything.

**7. Are there debts or other facts explaining your financial situation?**

"My **debts** include: (List debt and amount owed) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.

**8. Declaration**

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

- I cannot afford to pay court costs.
- I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is \_\_\_\_\_ . My date of birth is : \_\_\_\_ / \_\_\_\_ / \_\_\_\_.

My address is \_\_\_\_\_  
Street City State Zip Code Country

 \_\_\_\_\_ signed on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_  
Signature Month/Day/Year county name State