

The Appellate Process: Getting Your Team Ready for Appeal

By: David Coale



What Does the Court of Appeals Do Anyway?

1. Review final judgments (after trial)
2. Review interlocutory judgments (some orders are appealable before trial)
3. Consider petitions for writ of mandamus (everything that isn't #2)
4. Resolve motions related to 1-3

FINAL JUDGMENTS

You Got A Judgment You Don't Like: Now What?

- Bench Trial
 - Findings of Fact/Conclusions of Law
 - When can you request?
 - Deadline for Judge to Comply
 - What effect does it have on the appeals process?

TRCP 296

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.

Request for Findings of Fact/Conclusions of Law

CAUSE NO. D-1-GN-18-002700

Travis County
D-1-GN-18-002700
Jessica A. Limon

PELI PELI AUSTIN, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMLI DOWNTOWN AUSTIN, L.P.,	§	
	§	
Defendant.	§	345 TH JUDICIAL DISTRICT

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE COURT:

Pursuant to Tex. R. Civ. P. 296, Defendant requests findings of fact and conclusions of law with respect to those matters tried to the bench and addressed by the Final Judgment entered in this cause on October 26, 2020.

DATED: October 27, 2020

Respectfully submitted

/s/ David S. Coale

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TRCP 297

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 21a 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.

TRCP 298

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.

You Got A Judgment You Don't Like: Now What?

- Jury Trial:
 - Making a Motion for New Trial
 - Judgment Notwithstanding the Verdict (JNOV)
 - What effect do these motions have on the appeals process?

TRCP 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.

(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 seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period.

TRCP 329b. Time for Filing Motions

- (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.

The Notice of Appeal

- When do you file it?
 - Is the judgment Interlocutory?
 - Is it a final Judgment?
 - Is a MNT filed?
 - What does a NOA look like?

TRAP 26.1

Rule 26.1 - Civil Cases

The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:

(1) a motion for new trial;

(2) a motion to modify the judgment;

(3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or

(4) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court;

(b) in an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed;

The Notice of Appeal

3/10/2022 10:37
FELICIA PIT
DISTRICT CLE
DALLAS CO., TEX
Connie Jones DEPL

No. DC-20-14272

Shields Limited Partnership, <i>Plaintiff,</i>	§	In the District Court
	§	
v.	§	Dallas County, Texas
	§	
Pasha & Sina, Inc., et al., <i>Defendants.</i>	§	14th Judicial District

Notice of Appeal

TO THE HONORABLE COURT:

Pursuant to Texas Rule of Appellate Procedure 25.1, Defendants Pasha & Sina, Inc. and Mohsen Heidari give notice of their desire to appeal from the Order on Final Judgment, signed on December 13, 2021 (the "Judgment"), in Cause No. DC-20-14272, *Shields Limited Partnership v. Pasha & Sina, Inc., the City of Dallas, and Mohsen Heidari*, 14th District Court, Dallas, Texas).

This appeal will be taken to the Fifth Court of Appeals in Dallas, Texas.

You Filed The NOA – Now What?

- Requesting the Reporter's Record:
 - How and what does it look like?
 - Take good notes in trial to make sure all the exhibits were admitted on the record
 - How long does the Reporter have to comply?
 - What if she/he doesn't?

Request for Reporter's Record

LYNN PINKER HURST SCHWEGMANN

DAVID COALE
Partner
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3/10/2022 10:43 AM
FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
Brandon Keys DEPUTY
Lynn Pinker Hurst & Schwegmann, LLP
2100 Ross Avenue
Suite 2700
Dallas, Texas 75201
lynnllp.com

March 10, 2022

VIA E-FILE

Ms. Diane Robert, Court Reporter
14th Judicial District Court
Dallas County Courthouse
George L. Allen, Sr. Courts Building
600 Commerce Street
Dallas, Texas 75202

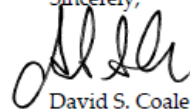
Re: Cause No. DC-20-14272; *Shields Limited Partnership v. Pasha & Sina, Inc., et al.*;
In the 14th Judicial District Court, Dallas County, Texas

Dear Ms. Robert:

I would like to request the reporter's record for the above matter containing the trial transcript from November 9, 2021.

Thank you for your assistance and please let me know if you have any questions.

Sincerely,



David S. Coale

DSC:kr

cc: Counsel of Record

You Filed The NOA – Now What?

- Requesting the Clerk's Record:
 - How and what does it look like?
 - What if something is missing and you want to supplement the Record?

Request for the Clerk's Record

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March 16, 2022

VIA E-FILE

Ms. Terri Kilgore, Chief Clerk
14th Judicial District Court
Dallas County Courthouse
George L. Allen, Sr. Courts Building
600 Commerce Street
Dallas, Texas 75202

Re: Cause No. DC-20-14272; *Shields Limited Partnership v. Pasha & Sina, Inc., et al.*;
In the 14th Judicial District Court, Dallas County, Texas

Dear Ms. Kilgore:

I would like to request a clerk's record for the above matter containing the following:

1. Plaintiff's Verified Original Petition, Application for Temporary Restraining Order, Application for Preliminary and Permanent Injunction and Request for Declaratory Judgment filed September 30, 2020
2. Defendant Pasha & Sina, Inc.'s Original Answer and Request for Disclosure filed October 30, 2020;
3. City of Dallas' Plea to Jurisdiction and, in the Alternative, Original Answer filed November 24, 2020;
4. Plaintiff's First Amended Petition and Request for Declaratory Judgment filed April 7, 2021;
5. Order Granting Plaintiff's Unopposed Motion for Leave to Include an Appendix Exceeding 25 pages signed April 26, 2021;
6. Plaintiff's Motion For Partial Summary Judgment Filed April 28, 2021;
7. Notice of Hearing on Plaintiff's Motion for Partial Summary Judgment filed April 29, 2021;

The Appellate Record

- What does it consist of?
- Where can you find it?
- What if there are sealed or *in camera* exhibits?

The Court of Appeals

Texas Judicial
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Fifth Court of Appeals

Appellate Case #

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WELCOME TO THE FIFTH COURT OF APPEALS, DALLAS, TEXAS

The Court of Appeals for the Fifth District of Texas at Dallas was formally opened on September 4, 1893. There was a Chief Justice and two Associate Justices until 1978 (85 years) when three additional Justices were authorized. In 1981, criminal jurisdiction was added and six additional justices. In 1983, an additional justice position was created and the present configuration is 12 Justices and one Chief Justice. Statewide, there are a total of 80 Appellate Court Justices.

Counties Served

- Collin
- Dallas
- Grayson
- Hunt
- Kaufman
- Rockwall

LATEST NEWS

INTERLOCUTORY JUDGMENTS

Appealing an Interlocutory Order

CPRC 51.014

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER. (a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;
- (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;
- (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;
- (9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;
- (10) grants relief sought by a motion under Section 74.351(1);
- (11) denies a motion to dismiss filed under Section 90.007;
- (12) denies a motion to dismiss filed under Section 27.003;
- (13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section 75.0022;
- (14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section 54.012(6) or 214.0012, Local Government Code; or

Appealing an Interlocutory Order CPRC 51.014(b)

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

MANDAMUS

Mandamus

“Can You Calendar the Response
Deadline for the Plaintiff’s
Mandamus Petition?”

Mandamus

We **GRANT** relators' motion and **STAY** the trial court's October 27, 2021 order and the deposition of Tanner West scheduled for Monday, November 8, pending resolution of this original proceeding.

We request that the respondent and real party in interest file a response, if any, to relators' petition for writ of mandamus by **November 15, 2021**.

MOTIONS

Ready, Set, Brief!

- What is the timetable for filing briefs?
- How long can my brief be?
- Requesting Oral Argument

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