

suspends sentence in open court.

- (3) Extension of Time. The appellate court may extend the time to file a formal bill of exception if, within 15 days after the deadline for filing the bill, the party files in the appellate court a motion complying with Rule 10.5(b).

- (f) *Inclusion in Clerk's Record.* When filed, a formal bill of exception should be included in the appellate record.

### Notes and Comments

Comment to 1997 change: This is former Rule 52. Subdivision 33.1 is rewritten. Former Rule 52(b), regarding offers of proof, is omitted as unnecessary. *See* TEX. R. CIV. EVID. 103; TEX. R. CRIM. EVID. 103. Subdivision 33.2 is also rewritten and the procedure is more definitely stated. Former Rule 52(d), regarding motions for new trial, is omitted as unnecessary. *See* TEX. R. CIV. P. 324(a) & (b).

Comment to 2002 change: The last sentence of former Rule 52(d) of the Rules of Appellate Procedure has been reinstated in substance.

## Rule 34. Appellate Record

### 34.1. Contents

The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. Even if more than one notice of appeal is filed, there should be only one appellate record in a case.

### 34.2. Agreed Record

By written stipulation filed with the trial court clerk, the parties may agree on the contents of the appellate record. An agreed record will be presumed to contain all evidence and filings relevant to the appeal. To request matter to be included in the agreed record, the parties must comply with the procedures in Rules 34.5 and 34.6.

### 34.3. Agreed Statement of the Case

In lieu of a reporter's record, the parties may agree on a brief statement of the case. The statement must be filed with the trial court clerk and included in the appellate record.

### 34.4. Form.

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

### 34.5. Clerk's Record

- (a) *Contents.* Unless the parties designate the filings in the appellate record by agreement under Rule 34.2, the record must include copies of the following:

- (1) in civil cases, all pleadings on which the trial was held;
- (2) in criminal cases, the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea;
- (3) the court's docket sheet;
- (4) the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- (5) the court's judgment or other order that is being appealed;
- (6) any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- (7) the notice of appeal;
- (8) any formal bill of exception;
- (9) any request for a reporter's record, including any statement of points or issues under Rule 34.6(c);
- (10) any request for preparation of the clerk's record;
- (11) in civil cases, a certified bill of costs, including the cost of preparing the clerk's record, showing credits for payments made;
- (12) in criminal cases, the trial court's certification of the defendant's right of

appeal under Rule 25.2; and

- (13) subject to (b), any filing that a party designates to have included in the record.

(b) *Request for Additional Items.*

- (1) **Time for Request.** At any time before the clerk's record is prepared, any party may file with the trial court clerk a written designation specifying items to be included in the record.
- (2) **Request Must be Specific.** A party requesting that an item be included in the clerk's record must specifically describe the item so that the clerk can readily identify it. The clerk will disregard a general designation, such as one for "all papers filed in the case."
- (3) **Requesting Unnecessary Items.** In a civil case, if a party requests that more items than necessary be included in the clerk's record or any supplement, the appellate court may — regardless of the appeal's outcome — require that party to pay the costs for the preparation of the unnecessary portion.
- (4) **Failure to Timely Request.** An appellate court must not refuse to file the clerk's record or a supplemental clerk's record because of a failure to timely request items to be included in the clerk's record.

(c) *Supplementation.*

- (1) If a relevant item has been omitted from the clerk's record, the trial court, the appellate court, or any party may by letter direct the trial court clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item.
- (2) If the appellate court in a criminal case orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by these rules, the trial court clerk must prepare, certify, and file in the appellate court a supplemental clerk's record containing those findings and

conclusions.

- (3) Any supplemental clerk's record will be part of the appellate record.

(d) *Defects or Inaccuracies.* If the clerk's record is defective or inaccurate, the appellate clerk must inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

(e) *Clerk's Record Lost or Destroyed.* If a filing designated for inclusion in the clerk's record has been lost or destroyed, the parties may, by written stipulation, deliver a copy of that item to the trial court clerk for inclusion in the clerk's record or a supplement. If the parties cannot agree, the trial court must — on any party's motion or at the appellate court's request — determine what constitutes an accurate copy of the missing item and order it to be included in the clerk's record or a supplement.

(f) *Original Documents.* If the trial court determines that original documents filed with the trial court clerk should be inspected by the appellate court or sent to that court in lieu of copies, the trial court must make an order for the safekeeping, transportation, and return of those original documents. The order must list the original documents and briefly describe them. All the documents must be arranged in their listed sequence and bound firmly together. On any party's motion or its own initiative, the appellate court may direct the trial court clerk to send it any original document.

(g) *Additional Copies of Clerk's Record in Criminal Cases.* In a criminal case, the clerk's record must be made in duplicate, and in a case in which the death penalty was assessed, in triplicate. The trial court clerk must retain the copy or copies for the parties to use with the court's permission.

(h) *Clerk May Consult With Parties.* The clerk may consult with the parties concerning the contents of the clerk's record.

### 34.6. Reporter's Record

(a) *Contents.*

- (1) **Stenographic Recording.** If the