

Supreme Court of Texas

Misc. Docket No. 23-9062

Preliminary Approval of Amendments to Texas Rules of Appellate Procedure 24.1 and 24.2

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Appellate Procedure 24.1 and 24.2. All the proposed amendments, except the amendments to Texas Rule of Appellate Procedure 24.1(b)(2), are in accordance with the Act of May 17, 2023, 88th Leg., R.S., ch. 763 (H.B. 4381, codified at TEX. CIV. PRAC. and REM. CODE § 52.007).
2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by December 1, 2023.
3. The Court will issue an order finalizing the rule after the close of the comment period. The Court may change the amendments in response to public comments.
4. The Court expects the amendments to Texas Rule of Appellate Procedure 24.1(b)(2) to take effect on January 1, 2024.
5. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 763, all the other amendments proposed in this Order are effective September 1, 2023. Those amendments apply only to a civil action commenced on or after September 1, 2023.
6. 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: August 25, 2023.



Nathan L. Hecht, Chief Justice



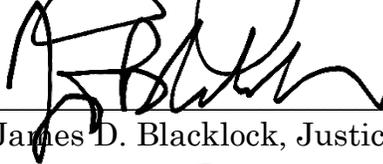
Debra H. Lehrmann, Justice



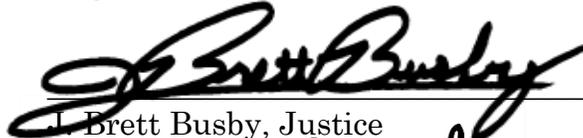
Jeffrey S. Boyd, Justice



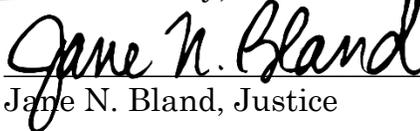
John P. Devine, Justice



James D. Blacklock, Justice



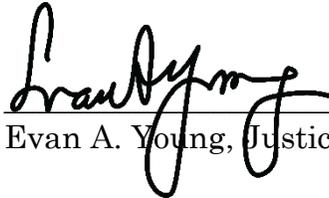
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.1. Suspension of Enforcement

- (a) *Methods.* Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:
- (1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;
 - (2) filing with the trial court clerk a good and sufficient bond;
 - (3) making a deposit with the trial court clerk in lieu of a bond; or
 - (4) providing alternate security under Rule 24.2(e) or ordered by the court.
- (b) *Bonds.*
- (1) A bond must be:
 - (A) in the amount required by 24.2;
 - (B) payable to the judgment creditor;
 - (C) signed by the judgment debtor or the debtor's agent;
 - (D) signed by a sufficient surety or sureties as obligors; and
 - (E) conditioned as required by (d).
 - (2) ~~To be effective a bond must be approved by the trial court clerk~~A bond is effective upon filing. On motion of any party, the trial court will review the bond.
- (c) *Deposit in Lieu of Bond.*
- (1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:
 - (A) cash;

- (B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state-chartered bank or savings-and-loan association; or
 - (C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association.
- (2) Amount of Deposit. The deposit must be in the amount required by 24.2.
- (3) Clerk's Duties; Interest. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.
- (d) *Conditions of Liability.* The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security under Rule 24.2(e) ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor — up to the amount of the bond, deposit, or security — if:
- (1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;
 - (2) the debtor does not perform an adverse judgment final on appeal; or
 - (3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.
- (e) *Orders of Trial Court.* The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.
- (f) *Effect of Supersedeas.* Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

24.2. Amount of Bond, Deposit, or Security

(a) *Type of Judgment.*

- (1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:
 - (A) 50 percent of the judgment debtor's current net worth; or
 - (B) 25 million dollars.
- (2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:
 - (A) the value of the property interest's rent or revenue, if the property interest is real; or
 - (B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.
- (3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.
- (4) Conservatorship or Custody. When the judgment involves the conservatorship or custody of a minor or other person under legal

disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

- (5) For a Governmental Entity. When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) *Lesser Amount.* The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(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. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.
- (2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

- (3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.
- (d) *Injunction.* The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

(e) *Alternative Security in Certain Cases.*

- (1) *Applicability.* Paragraph (e) applies only to a judgment debtor with a net worth of less than \$10 million.
- (2) *Alternative Security; Required Showing.* On a showing by the judgment debtor that posting security in the amount required under (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 must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.
- (3) *Earnings on Appeal.* During an appeal, the judgment debtor may continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.
- (f) *Redetermination.* If an appellate court reduces the amount of the judgment that the trial court used to set the bond, deposit, or security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination by the trial court of the amount of the bond, deposit, or security required to suspend enforcement.

Comment to 2023 change: Rule 24.1(b)(2) is amended to provide that a bond is effective upon filing, though the bond is still subject to challenge. New Rule 24.2(e) and (f) are added to implement section 52.007 of the Texas Civil Practice and Remedies Code.