

# Navigating the Transition from Trial to Appellate Counsel

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**MICHAEL HULL,**

ASSISTANT COUNTY ATTORNEY, HARRIS COUNTY ATTORNEY'S OFFICE

**MARK BRIGGS,**

BRIGGS & ASSOCIATES, PC

**LAUREN JAMES,**

CHAMBERS ATTORNEY, COURT OF APPEALS, FIRST DISTRICT OF TEXAS

**FEBRUARY 9, 2024**





# Preservation of Error at Trial

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# Finality and Appealability of the Judgment

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# Finality of Judgment

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Generally, a party may appeal only from a final judgment. [Tex. Fam. Code § 109.002\(b\)](#); *but see* [Tex. Civ. Prac. & Rem. Code § 51.014](#) (exceptions).

A judgment is final “if it disposes of all pending parties and claims in the record, except as necessary to carry out the decree.” [Lehmann v. Har-Con Corp.](#), [39 S.W.3d 191, 195](#) (Tex. 2001). A final judgment is an order that resolves the last claims for all parties.

An order following a trial on the merits is presumed final. *Id.* at 198-99.

Final order/judgment does not have to say “final” to be final

Beware of severed cases ...



# Finality and *De Novo* Review

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Denial of *de novo* review does not preclude the filing of post-judgment motions for relief. [Tex. Fam. Code §§ 201.015\(h\); 201.317\(g\)](#).

A party need not request a *de novo* hearing from a referring court before appealing, petitioning for review, or requesting relief from an appellate court. [Tex. Fam. Code §§ 201.016\(a\); 201.318\(a\)](#).

When an order by an associate judge is (or is not) final, *see generally* [Tex. Fam. Code §§ 201.007\(c\); 201.013\(b\); 201.016\(b\) & \(c\); 201.2041\(a\); 201.306\(b\); 201.315\(b\); 201.318\(b\) & \(c\)](#).

Requests for *de novo* review must be requested *not later than the third working day after party receives notice of substance of AJ's report*, [Tex. Fam. Code §§ 201.015\(a\)\(1\); 201.2042\(a\); 201.317\(a\)](#).

Warning: These rules may differ if judge referred to operates under a statutory scheme outside of Chapter 201, Family Code. *See e.g.*, [Tex. Gov't Code § 54A.111\(b\)](#) (to appeal AJ's decision, party must file appeal in the referring court *not later than the seventh day after the date the party receives notice of the AJ's decision*).



# Right to Counsel

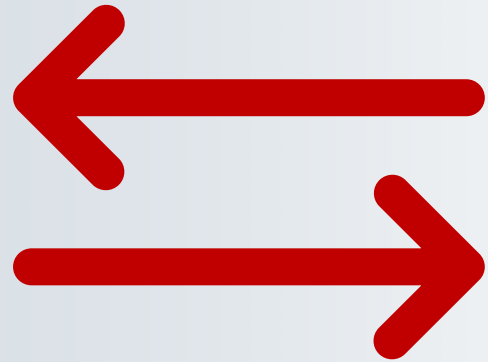
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# Right to Counsel

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An appointed attorney ad litem for a parent “continues to serve in that capacity” until the date the suit is dismissed, the date all appeals are exhausted or waived, or until “the date the attorney is relieved of the attorney’s duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.” [Tex. Fam. Code § 107.016\(2\)](#).

The right to appointed counsel continues from the trial court, to the courts of appeals, and to the Texas Supreme Court. [In re P.M., 520 S.W.3d 24, 27 \(Tex. 2016\)](#).



# Withdrawal and Substitution of Appeals Counsel

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# Withdrawal and Substitution

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While some courts routinely replace trial counsel with appellate counsel following the rendition of a final judgment, the general rule permits appointed counsel to withdraw “only for good cause and on appropriate terms and conditions.” *In re P.M.*, 520 S.W.3d at 27.

Courts must ensure that withdrawal “will not result in foreseeable prejudice to the client.” *Id.* at 27.

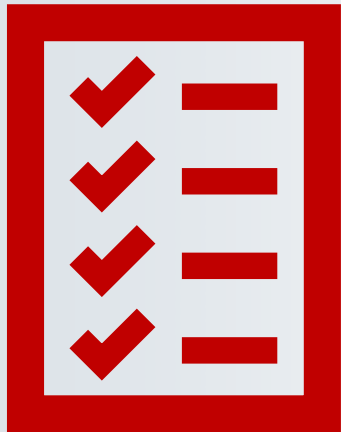
*See In re J.O.A.*, 283 S.W.3d 336, 343-44 (Tex. 2008); Tex. Disciplinary Rules Prof’l Conduct R. 1.15, *infra*.





# Counseling your client

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# Post-Judgment Duties

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Appointed trial counsel must consider whether certain steps should be taken to ensure an appeal occurs and that it has the best chance of success. Counsel planning to withdraw or already having withdrawn may still owe ethical duties to the client or former client. [Tex. Disciplinary Rules Prof'l Conduct R. 1.15\(d\)](#).



# Withdrawal, Substitution and the Client

Trial Counsel: License and Malpractice-Saving Steps to Consider

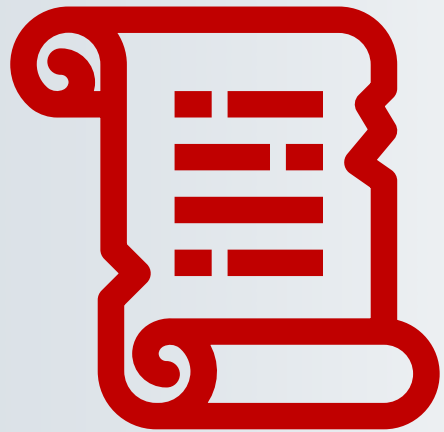
1. Notify client: Explain right of appeal, deadlines, etc.
2. Determine if client wants to appeal; if not, try to get in writing
3. If so, file Motion to Discharge or Withdraw and for Appointment of Appellate Counsel
4. Set hearing; expedite, if possible
5. File Notice of Appeal with trial court clerk
6. Secure order appointing new counsel

7. Provide new counsel with order, name and contact information of client, and suggest issues/points for appeal
8. Provide client with name and contact information for new counsel

If no appellate counsel appointed or cannot contact counsel:

1. File request for clerk's and reporter's records
2. File docketing statement with court of appeals
3. Set time aside; brief due 20 days after records filed





# Post-Judgment Motions

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# Post-Judgment Motions

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After the court signs the final judgment, a party may file a post-judgment motion.

These motions include a motion for new trial, a motion to vacate, modify, correct, or reform a judgment, or the like. [Tex. R. Civ. P. 329b](#).

Post-judgment motions must be filed within thirty days of the date the judgment is signed. [Tex. R. Civ. P. 329b\(a\) & \(g\)](#).





# Post-Judgment Requirements

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# Notice of Appeal

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Appeals of final orders terminating the parent-child relationship are given precedence and are accelerated under the Rules of Appellate Procedure. [Tex. Fam. Code §§ 109.002\(b\); 263.405.](#)

Because the appeal is accelerated, the notice of appeal must be filed within **twenty days** after the judgment or order is signed. [Tex. R. App. P. 26.1\(b\).](#)

A post-judgment motion or request for findings of fact do **not** extend the time for filing a notice of appeal in a SAPCR originally filed by the government. [Tex. R. App. P. 26.1\(b\) & 28.1\(b\).](#)



# Perfecting the Appeal

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The appeal is perfected when a party files the notice of appeal with the trial court clerk. [Tex. R. App. P. 25.1\(a\)](#).

If mistakenly (but timely) filed with the appellate court clerk, the appeal is still perfected. *Id.*

The specific content required in a notice of appeal is delineated in [Tex. R. App. P. 25.1\(d\)](#).

The filing of the notice of appeal is *the only jurisdictional requisite* to perfect the appeal. [Tex. R. App. P. 25.1\(b\)](#).



# Critical Deadlines

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## 20 Days after Judgment

- Notice of appeal must be filed with the trial court. [Tex. R. App. P. 26.1\(b\)](#).
- A request for Findings of Fact and Conclusions of Law due (but unnecessary in most cases). [Tex. R. Civ. P. 296](#).

## 30 Days after Judgment

- Post-judgment motions must be filed. [Tex. R. Civ. P. 329b\(a\) & \(g\)](#).

## 35 Days after Judgment

- The deadline for filing an extension to file a notice of appeal (fifteen days after the deadline for filing the original notice of appeal.) [Tex. R. Civ. P. 26.3](#).



# Questions?

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**cctraining@txcourts.gov**

<http://texaschildrenscommission.gov>

