PROBATE IS SO "APPEALING"

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I. INTRODUCTION

One of the most problematic issues in appeals from probate court is determining whether the order the party seeks to appeal is an appealable order. The general test for determining whether an order is appealable was established in *Crowson v. Wakeham*, 897 S.W.2d 779 (Tex. 1995). This test modifies the "one final judgment" rule because of the "need to review controlling, intermediate decisions before an error can harm later phases of the proceeding." *In re Estate of Padilla*, 103 S.W.3d 563, 566 (Tex. App.—San Antonio 2003, no pet.). Although the test is easy to recite, it can be difficult to apply. This paper reviews opinions from the Texas state courts that discuss the jurisdictional issue. This paper also briefly discusses the mechanics of perfecting an appeal.

II. GENERAL TEST

The general test for determining whether a probate court's order or judgment is appealable was established by the Texas Supreme Court in *Crowson v. Wakeham*, 897 S.W.2d 779 (Tex. 1995). In *Crowson,* George A. Brisson, Jr. died on August 4, 1989. Brisson had no children. Ann Blanks filed a will for probate that named her as the sole beneficiary and independent executrix. Bonnie Crowson filed a contest to the application, claiming that she was Brisson's common law wife. Crowson also filed a counterclaim seeking damages for Blanks's knowing and willful attempt to defraud her. Several other purported heirs intervened and contested the will. In addition to the contests, an application to determine heirship was filed. Blanks later nonsuited the application to probate her version of Brisson's will which left pending the controversy involving the heirship determination, including the issue of whether Crowson was Brisson's common law wife.

The trial court granted a partial summary judgment on the ground that Crowson was not the decedent's common law wife. The trial court later severed the summary judgment into a separate cause number. Crowson calculated the date for filing her notice of appeal from the date of the severance order. The court of appeals dismissed the appeal as untimely filed on the basis that the original partial summary judgment was an appealable order.

The Texas Supreme Court initially noted the potential confusion created by language used in earlier decisions. In order to alleviate that confusion, the court adopted the following test:

> If there is an express statute, such as the one for the complete heirship judgment, declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

897 S.W.2d at 783. Applying this test, the court held that the partial summary judgment order was interlocutory because of the contested heirship proceeding. *Id.* at 780. The court reasoned:

> The intervenors all brought actions against Crowson as part of the larger heirship proceedings. As between Crowson and the intervenors, the proper "phase" of the proceeding is the heirship determination.

Id. at 783.

Eleven years after its decision in *Crowson*, the Texas Supreme Court reaffirmed the *Crowson* test in *De Ayala v. Mackie*, 193 S.W.3d 575 (Tex. 2006). In that case, Juan Roberto Brittingham McLean died testate in Mexico, and his will was admitted to probate in a Mexican court. Brittingham's wife sued the estate, requesting that the couple's property agreement be set aside While an appeal was pending of the Mexican probate court's order denying her request and while the Mexican probate proceeding remained open, Brittingham's wife filed an application to have Brittingham's will admitted to probate in Texas, where she alleged that he owned personal property. Brittingham's wife subsequently sued Brittingham's daughter and grandchildren in the Texas proceeding, alleging they were pillaging the estate's assets. Brittingham's daughter moved to dismiss the Texas ancillary probate proceeding for lack of subject matter jurisdiction or, alternatively, to have Brittingham's wife removed as executor. The trial court denied the motion, and Brittingham's daughter appealed.

After restating the *Crowson* test quoted above, the Texas Supreme Court held that the order was not

final and appealable "because it did not dispose of all parties or issues in a particular phase of the proceedings." Instead, the court held, "Because an order denying a plea to the jurisdiction and refusing to remove an executor does not end a phase of the proceedings, but sets the stage for the resolution of all proceedings, the order is interlocutory."

III. APPLICATION

A. *SJ MEDICAL CTR., L.L.C. V. ESTAHBANATI*

In *SJ Medical Ctr., L.L.C. v. Estahbanati*, No. 14-12-01004-CV, 2013 WL 6628628 (Tex. App.—Houston [14th Dist.] Dec. 17, 2013, no pet. h.), a Texas limited liability company sought to appeal an order denying its plea to the jurisdiction. Citing *De Ayala v. Mackie*, the Houston court held that the order was not a final order because it did not dispose of all parties or all issues in a particular phase of the probate proceedings.

B. *IN RE ESTATE OF MCDONALD*

In *In re Estate of McDonald*, No. 09-13-00470-CV, 2013 WL 6199277 (Tex. App.—Beaumont Nov. 27, 2013, no pet.) (mem. op.), Kaylen Brooke Rankin filed applications for letters of administration and to determine heirship following the death of Chad Eric McDonald. Kaylen also filed an application alleging she and Chad had an informal marriage and that she was the mother of Chad's child. After Chad's death, Kaylen gave birth to a second child who possibly also was Chad's child. Johnsye McDonald filed a competing application for independent administration and to determine heirship. Johnsye alleged Chad was never married, and he had an interest in the estate because he was given possession of Chad's minor child by court order and had paid Chad's funeral bills. Kaylen filed a motion challenging Johnsye's standing to participate in the probate proceedings. The trial court denied the motion, finding that Johnsye had standing to participate in the proceedings as a creditor of the estate but further finding that Johnsye lacked standing to participate as a person interested in the welfare of Chad's minor child. Johnsye appealed.

After reciting the *Crowson* test, the Beaumont court first noted that "An order sustaining a challenge to an applicant's interest in an estate may be appealed because it disposes of the merits of the issue of interest." Johnsye argued that the probate court's order disposed of his claimed interest in Chad's estate, while Kaylen argued the appeal was premature because no judgment declaring heirship had been entered. The Beaumont court held that the probate court's order did not dismiss Johnsye's claimed interest in the estate but allowed him to participate as a creditor. With regard to the probate court's finding that Johnsye lacked standing to participate as a party interested in the welfare of Chad's child, the probate court held the order with respect to that finding was not final because "the trial court could change its mind regarding its ruling on that matter prior to the trial." The court noted that "the trial court neither struck McDonald's pleadings nor dismissed his application to determine heirship or his application to administer Chad's estate." Because those claims remained pending before the court, the Beaumont court concluded that "the orders disposing of Johnsye's claims remain interlocutory."

C. *IN RE ESTATE OF HILL*

In *In re Estate of Hill*, No. 09-13-00022-CV, 2013 WL 6044404 (Tex. App.—Beaumont Nov. 14, 2013, no pet.) (mem. op.), Farrin Hill was appointed dependent administrator of her father's estate and filed an application for the sale of real property which the probate court granted, ordering the property to be sold at a private sale. Janelle Hill, the decedent's wife, filed a motion for reconsideration, asserting she is entitled to a life estate in the property because it was the decedent's homestead and she had not abandoned the homestead. After the probate court denied her motion, Janelle appealed.

The Beaumont court noted Section 355 of the Texas Probate Code contains "a comprehensive statutory scheme that governs estate administration proceedings to sell estate property and orders authorizing such sales." Section 355 sets forth the actions a probate court must take upon the filing of a report of sale. After such a report is filed and the probate court has conducted an evidentiary hearing, the probate court may either confirm the sale and authorize the conveyance of the property or set the sale aside and order a new sale. The probate court's confirmation or disapproval of the report has the force and effect of a final judgment which may then be appealed by any person interested in the estate or in the sale. Accordingly, the Beaumont court concluded that Section 355 is an "express statute" declaring when the phase of a probate proceeding involving the sale of estate property is final and appealable. Because no report of sale had been filed and the probate court had not confirmed or disapproved the report, the Beaumont court held that

the probate court's order was not final. The Beaumont court rejected Janelle's reliance on a 2005 decision by the Austin court of appeals which appeared to support a contrary position, noting that the Austin court did not address Section 355. *See Majeski v. Estate of Majeski*, 163 S.W.3d 102 (Tex. App.—Austin 2005, no pet.).

D. *IN RE ESTATE OF ULBRICH*

In *In re Estate of Ulbrich*, No. 04-12-00514-CV, 2013 WL 5297161 (Tex. App.—San Antonio Sept. 18, 2013, no pet.) (mem. op.), the decedent's surviving spouse, Douglas J. Ulbrich, filed an application seeking to have a homestead and personal property set aside as exempt property pursuant to Section 271 of the Texas Probate Code. The probate court entered a partial order determining what property constituted the couple's homestead and later entered a second order regarding the personal property. In the second order, the probate court relied on principles of res judicata and collateral estoppel to preclude Douglas from challenging its homestead determination. Douglas filed an appeal after the second order was entered, specifically challenging the probate court's reliance on res judicata and collateral estoppel.

The San Antonio first noted that Douglas's application sought to exempt both the homestead and personal property pursuant to Section 271. The court held that because the partial order only decided a part of Douglas's application, the order "did not conclude a discrete phase of the proceedings and was not appealable." Accordingly, because the first order "was not an appealable order, the probate court erroneously concluded that res judicata and collateral estoppel applied to that order."

E. *IN RE ESTATE OF CALKINS*

In *In re Estate of Calkins*, Nos. 01-11-00731-CV, 01-11-00732-CV, 01-11-00733-CV & 01-11-00734-CV, 2013 WL 4507923 (Tex. App.—Houston [1st Dist.] Aug. 22, 2013, no pet.) (mem. op.), Carolyn James filed an application for a permanent guardianship over her mother's person and estate, alleging her mother was incapacitated by Alzheimer's disease. Carolyn's brother, Richard Calkins, moved to dismiss the proceeding, asserting Carolyn served the application using a private process server rather than a sheriff or other officer. The probate court denied Richard's motion but concluded that it did not acquire jurisdiction until Carolyn served her amended guardianship application and declared void most of the orders entered before that date. Carolyn filed several separate but related appeals challenging the portion of the probate court's order declaring prior orders to be void.

After reviewing the *Crowson* test and the subsequent decision in *De Ayala v. Mackie*, the Houston court held the order denying Richard's motion to dismiss was a nonappealable, interlocutory ruling. The court reasoned, "the order has not been severed from the guardianship proceeding, and Carolyn has not cited, nor can we find, a statute authorizing her appeal." The court further reasoned, "Even though the order includes the probate court's declaration of the date on which it acquired jurisdiction, the markers of finality are absent here because that order does not dispose of all parties or issues in any particular phase of the guardianship proceeding. That is, the order does not resolve the issue of the proposed ward's capacity, dispose of a discrete phase of the guardianship proceeding, appoint a guardian, or state that no guardian will be appointed, instead the probate court's refusal to dismiss the guardianship proceeding sets the stage for later rulings on these issues."

F. *IN RE ESTATE OF MONTEZ*

In *In re Estate of Montez*, No. 05-13-00520-CV, 2013 WL 2731625 (Tex. App.—Dallas June 12, 2013, no pet.) (mem. op.), the appellant sought to appeal the probate court's order requiring genetic testing of the appellant and another proposed heir in an heirship proceeding. The Dallas court questioned its jurisdiction to consider the appeal, noting that Section 54 of the Texas Probate Code provides for an appeal of a complete heirship judgment that determines heirship, declares the names and places of residence of the decedent's heirs, and their respective shares and interests in the decedent's property. Although the court further noted that a probate court is authorized to order genetic testing in a heirship proceedings, the court held that such an order "is *part* of the heirship proceeding but it does not finally determine heirship." Accordingly, the Dallas court dismissed the appeal.

G. *IN RE ESTATE OF ARIZOLA*

In *In re Estate of Arizola*, 401 S.W.3d 664 (Tex. App.—San Antonio 2013, pet. denied), the San Antonio court revisited an earlier decision dismissing a prior appeal of an order appointing Rogelio Arizola as administrator of his brother's

estate. *See In re Estate of Arizola*, No. 04-11-00059-CV, 2011 WL 1852969 (Tex. App.—San Antonio May 11, 2011, no pet.) (mem. op.). Although the court noted that it properly stated the *Crowson* test for determining finality, the court asserted that "we then appear to have misapplied the standard in holding the order appointing Rogelio as administrator was interlocutory," citing numerous decisions from sister courts which appeared to support the conclusion that "an order appointing an administrator ends a phase of the proceedings in resolving the issue of who will represent the estate." Because the prior decision did not affect the court's jurisdiction to consider the appeal then pending before it, however, the San Antonio court did not further address the prior decision, but noted that it did question the prior holding.

H. *IN RE GUARDIANSHIP OF BENAVIDES*

In *In re Guardianship of Benavides*, 403 S.W.3d 370 (Tex. App.—San Antonio 2013, pet. denied), the adult children of Carlos Y. Benavides, Jr. filed an application for temporary and permanent guardianship over Benavides's person and estate. Benavides, represented by attorney Richard L. Leshin, filed a motion to dismiss the applications, a contest to the applications, and a jury demand. The adult children then filed a motion to show authority pursuant to Rule 12 of the Texas Rules of Civil Procedure, asserting Benavides did not have the mental capacity to retain Leshin to represent him. At the start of the hearing on the motion, Benavides asserted the trial court could not rule on the motion because Benavides was entitled to a jury trial on the issue of his mental capacity. The probate court rejected the argument and conducted an evidentiary hearing. At the conclusion of the hearing, the probate court found that Leshin failed to meet his burden of showing that he had authority to represent Benavides, disallowed further appearances by Leshin, and struck all pleadings filed by him.

The San Antonio court noted that orders on Rule 12 motions generally are not appealable until merged into a final judgment but further noted that probate and guardianship proceedings have exceptions to the one final judgment rule. The court then determined that the order in question "disposed of all issues raised in the rule 12 motion to show authority, and concluded a discrete phase of the guardianship proceedings." Accordingly, the court held that the probate court's order was a final and appealable order.

I. *IN RE ESTATE OF ADAMS*

In *In re Estate of Adams*, No. 14-12-00064-CV, 2013 WL 84925 (Tex. App.—Houston [14th Dist.] Jan. 8, 2013, no pet.), the decedent, Deborah I. Adams, left a will specifying that Kaelynn Adams Haack and Cooper Adams Haack, who were minor children, should be treated as if they were her biological children. When an application to probate the will was filed, Adams's sister, Mary Roberts, filed an opposition to the probate. The biological mother of the two minor children then filed a plea to the jurisdiction, arguing that Roberts was not an interested person for purposes of challenging the will. The trial court granted the plea, and Roberts appealed.

In response to a challenge to the Houston court's jurisdiction to consider the appeal, the Houston court noted, "Under longstanding case law, an order determining whether a party is an 'interested' party under section 3r of the Texas Probate Code is not interlocutory and may be appealed." The court further noted, "A judgment of no interest and consequent dismissal of an application for probate or contest of a will is in no sense interlocutory." Accordingly, the court held that the probate court's order granting the plea to the jurisdiction was an appealable final judgment.

J. *IN RE ESTATE OF HUTCHINS*

In *In re Estate of Hutchins*, No. 05-12-01163-CV, 2012 WL 5503530 (Tex. App.—Dallas Nov. 13, 2012, no pet.) (mem. op.), the executrix of an estate filed a turnover motion seeking to recover possession of property of the estate which was in the possession of one of the beneficiaries. The beneficiary responded, asserting the executrix was not entitled to the requested relief because she was not a judgment creditor entitled to turnover relief under section 31.002 of the Texas Civil Practice and Remedies Code. The beneficiary also sought sanctions for the filing of a groundless motion. The probate court denied the executrix's turnover motion and granted the motions for sanctions. The executrix appealed both orders.

The Dallas court ordered the parties to file letter briefs addressing whether the orders were appealable. The parties conceded that the order denying the turnover motion was not appealable; however, the executrix asserted the sanctions order was final because the order was not tied to any further determinations and required immediate payment. The Dallas court disagreed. Although the sanctions order was not tied to any further action by

the court, the Dallas court held that it did not dispose of all of the parties and claims pending the probate proceeding. Instead, the sanctions order was tied to the turnover motion which the parties conceded was not then appealable.

K. *IN RE ESTATE OF O'NEIL*

In *In re Estate of O'Neil*, No. 04-11-00586-CV, 2012 WL 3776490 (Tex. App.—San Antonio Aug. 31, 2012, no pet.) (mem. op.), while hospitalized with terminal cancer, the decedent, Frank O'Neil, Jr., executed a will on February 6, 2009, and married Gloria Farious O'Neil on February 21, 2009. Frank subsequently died on February 27, 2009. On March 6, 2009, Gloria filed an application to probate Frank's will, and Frank's son, Michael, filed an opposition. Gloria subsequently filed a motion for summary judgment on the issue of Frank's testamentary capacity which the probate court granted.

Although Michael appealed the summary judgment, he asserted the trial court's judgment was not final because the contest to the validity of Frank and Gloria's marriage was still pending. The San Antonio court disagreed, noting, "Here, the question of testamentary capacity conclusively disposed of the one phase of the proceedings and thus finally adjudicated a substantial right."

L. *IN RE ESTATE OF VELVIN*

In *In re Estate of Velvin*, No. 06-12-00062-CV, 2012 WL 3129133 (Tex. App.—Texarkana Aug. 2, 2012, orig. proceeding) (mem. op.), a county court judge denied a motion to transfer a probate proceeding involving contested matters to a county court at law. The Texarkana court held that the failure to transfer the contested matters to the county court at law pursuant to Section 4E of the Texas Probate Code was an abuse of discretion. The Texarkana court concluded that mandamus relief was available because "permitting the County Court to proceed despite a mandatory requirement to transfer the case would result 'in a waste of judicial resources,' such that 'any eventual appellate remedy would be inadequate.'"

M. *VICKERY V. GORDON*

In *Vickery v. Gordon*, No. 14-11-00812-CV, 2012 WL 3089409 (Tex. App.—Houston [14th Dist.] July 31, 2012, no pet.) (mem. op.), the decedent, Neil T. Gordon, executed three wills in the final year of his life. The final will devised a large portion of his estate to Patricia Vickery, his fiancé who had been his significant other for a year and a half preceding his death. Upon Neil's death, his son, Marshall Gordon, requested an autopsy. Vickery filed an application to probate Neil's final will, and Marshall filed his opposition approximately one month before receiving the autopsy report. After the autopsy report and Vickery's late discovery responses alleviated Marshall's concerns with his father's will, Marshall nonsuited his contest; however, Vickery moved for sanctions asserting that the contest was groundless and brought in bad faith. The trial court signed an order admitting Neil's will to probate but denied the sanctions. Vickery appealed.

The Houston court noted that the motion for sanctions "may logically be considered a part of the proceedings relating to the admission of Neil's will to probate. Indeed, the motion pertained exclusively to the actions of Marshall and his law firm during the course of the will contest." The court held that the order was final and appealable, asserting, "The judgment denying sanctions was part of the proceedings relating to the probate of Neil's will. When judgment was entered on the sanction issue, Marshall had already nonsuited his will contest and the trial court had signed an order admitting the will to probate." Accordingly, the Houston court held the order was final and appealable as no unadjudicated issues remained "[o]n this discrete issue of the will's admission to probate."

N. *IN RE ESTATE OF SCOTT*

In *In re Estate of Scott*, 364 S.W.3d 926 (Tex. App.—Dallas 2012, no pet.), after the probate court signed an order approving a final account of an estate and authorizing distribution of the estate, the dependent administrator filed an amended final account and motion for relief from the prior order, requesting $10,000 in attorney's fees and accounting fees. The trial court denied the motion, and the dependent administrator appealed.

In evaluating whether the order was appealable, the Dallas court relied on the Houston court's decision in *Bozeman v. Kornblit*, 232 S.W.2d 261, 262 (Tex. App.—Houston [1st Dist.] 2007, no pet.). In *Bozeman*, the Houston court held that an order approving an account for final settlement was not a final, appealable order because the order "specified additional actions that had to occur before the estate could be closed." Similarly, the Dallas court noted that the order approving the account for final settlement also specified additional steps that had to be taken before the estate would be closed.

Accordingly, the order merely set the stage for a final resolution of the proceeding, and the order denying the motion for amended final account would not be final for purposes of appeal until the additional steps had been taken.

O. *IN RE ESTATE OF BACCUS*

In *In re Estate of Baccus*, No. 05-11-01247-CV, 2012 WL 1142673 (Tex. App.—Dallas Apr. 4, 2012, no pet.) (mem. op.), the children of Robert L. Baccus, II and Shirley D. Baccus sued Reeves Brothers, Inc. asserting numerous claims relating to an employment agreement pursuant to which Reeves's predecessor agreed to provide Robert and Shirley certain insurance benefits that were never provided. The lawsuit was filed fifteen years after Robert died, and two years after Shirley died. Reeves moved for summary judgment contending the claims relating to Robert's insurance plans were barred by limitations. The probate court granted the motion and dismissed all claims based upon "the existence or sufficiency or [Robert's] life insurance plans." The children appealed.

The Dallas court dismissed the appeal for lack of jurisdiction, noting that the claims pertaining to Shirley's insurance benefits remained pending. Although the children argued that the claims against each estate were distinct, the Dallas court disagreed, noting that the claims were brought in a single proceeding, were contained in a single petition, and involved the same employment agreement.

P. *IN RE ESTATE OF WOOTEN*

In *In re Estate of Wooten*, No. 12-10-00276-CV, 2012 WL 219148 (Tex. App.—Tyler Jan. 23, 2012, no pet.) (mem. op.), Sadie Berry Wooten divided her estate into three equal parts. Two of Sadie's alleged heirs subsequently filed an application for partition and distribution of the estate, requesting that the real and personal property of Sadie's estate be partitioned and alleging that two other heirs had wrongfully retained the proceeds from timber sales and hunting leases. The probate court signed an order identifying the property to be partitioned and the interests of the three groups of heirs and found that one heir owed the estate $49,000 for timber sales and hunting leases. The order did not appoint commissioners but stated that such an appointment would be made after the three groups of heirs each deposited $3,500 into the court's registry to cover the expenses of the estate and to provide compensation and expenses for the commissioners. The probate court's order stated that it was not a final judgment; however, an appeal was filed.

The Tyler court noted that section 378 of the Texas Probate Code states that if a probate court determines that an estate should be partitioned and distributed, it must enter a decree stating the names and addresses, if known, of each heir entitled to a share of the estate, the proportional part of the estate to which each is entitled, and a full description of the estate to be distributed. Section 380 of the Code also requires the probate court to appoint commissioners to make the partition; however, that appointment is not required to be included in the same order. The Tyler court noted that its jurisdiction was dependent on whether the probate court's "order disposed of each issue raised in the pleadings for that portion of the proceedings, or whether the order conclusively disposed of that phase of the proceeding." Concluding that the probate court's order addressed all the relief that was requested in the petition to partition and distribute the estate, the Tyler court concluded that the order was final and appealable.

Q. *HALUSKA V. HALUKSA-RAUSCH*

In *Haluska v. Haluska-Rausch*, No. 03-11-00312-CV, 2012 WL 254639 (Tex. App.—Austin Jan. 24, 2012, no pet.) (mem. op.), the Haluska children filed a lawsuit seeking to have their father removed as trustee of two trusts their mother had created in her will. The children requested their father's removal and the recovery of attorney's fees. The trial court granted a partial summary judgment, removing the father as trustee but not addressing the request for attorney's fees. The father appealed, and the children filed a motion to dismiss.

The Austin court noted that the judgment was not final because it did not address the claim for attorney's fees, and an order appointing a successor trustee is not authorized as an interlocutory appeal under section 51.014(a)(1) which allows only for an interlocutory appeal of an order appointing an initial trustee. Although the father argued that the judgment was appealable because it disposed of all issues in a particular phase of a probate proceeding, the Austin court rejected the argument for two reasons. First, the proceedings concerned the administration of trusts and could have been brought in district court as well as probate court. Second, the order did not dispose of all issues in the phase of the proceeding because the claim for attorney's fees remained pending.

R. *IN RE GUARDIANSHIP OF C.Y.B., JR.*

In *In re Guardianship of C.Y.B., Jr.*, No. 04-11-00780-CV, 2012 WL 76914 (Tex. App.—San Antonio Jan. 11, 2012, no pet.) (mem. op.), appellants sought to appeal the following orders in a guardianship proceeding: (1) order denying motion to dismiss for lack of jurisdiction; (2) order denying motion to dismiss; (3) order appointing temporary guardian of the person and estate; and (4) order appointing a guardian ad litem. Based on the Texas Supreme Court's holding in *De Ayala v. Mackie*, the San Antonio court held that the orders were not appealable because they did "not end a phase of the proceedings, but set[] the stage for the resolution of all proceedings.

IV. PERFECTION OF APPEAL

To perfect an appeal, the appellant must file a notice of appeal with the trial court clerk. *See* TEX. R. APP. P. 25.1(a). The notice of appeal must be served on all parties to the trial court's judgment or proceeding. *See* TEX. R. APP. P. 25.1(e). A copy of the notice of appeal must be filed with the appellate court clerk. *See* TEX. R. APP. P. 25.1(e). The notice of appeal must be filed within 30 days after the judgment is signed unless one of the exceptions contained in Rule 26.1 applies. *See* TEX. R. APP. P. 26.1. Rule 34.5 governs the content of the clerk's record. *See* TEX. R. APP. P. 34.5. If a party wishes to ensure that certain documents are included in the clerk's record, the party should file a written request with the trial court clerk listing the documents the party wishes to have included. *See* TEX. R. APP. P. 34.5(b). At or before the time for perfecting the appeal, the appellant must request in writing that the official reporter prepare the reporter's record and designate the exhibits to be included. *See* TEX. R. APP. P. 34.6(b).

V. CONCLUSION

This paper is intended to assist probate practitioners in understanding the analysis applied in determining whether a probate court's order is appealable. If a notice of appeal is filed and the appellate court questions its jurisdiction, the court of appeals generally issues an order requiring the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction prior to dismissing the appeal.