

SUBJECT: Deadlines for filing an interlocutory appeal

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 8 ayes — Bosse, Janek, Alvarado, Dutton, Goodman, Hope, Smithee, Zbranek

0 nays

1 present, not voting — Nixon

WITNESSES: For — Richard C. Hile, Texas Trial Lawyers Association

Against — None

BACKGROUND: Interlocutory orders are temporary or provisional orders that do not determine a cause of action but decide some intervening matter in a case. These orders are generally final and are not appealable until there is a final judgment in the case, with some exceptions. If provided by statute or rule, some interlocutory orders are appealable to a higher court. An interlocutory appeal allows a party to a lawsuit to appeal certain court orders to a court of appeals before there is a final judgment at the trial level. Under Civil Practice and Remedies Code, sec. 51.014, a party involved in litigation may file an interlocutory appeal based on the following issues:

- ! appointment of a receiver or trustee;
- ! class certification for a class-action suit;
- ! granting or denial of a temporary injunction;
- ! denial of a summary judgment based on official immunity or a free-speech claim relating to the media;
- ! an order granting or denying a special appearance under Texas Rules of Civil Procedure, Rule 120; and
- ! an order granting or denying a governmental unit's plea to the jurisdiction.

Sec. 51.014 requires that a trial be postponed without penalty while an interlocutory appeal is under consideration by an appeals court. There are no specific deadlines for filing an interlocutory appeal.

A special appearance is an objection to a court's personal jurisdiction. Personal jurisdiction is one way a court may gain jurisdiction over a person for a cause of action. It is based on whether the defendant's due-process rights would be violated by being sued in the court because the defendant has no contacts with the jurisdiction. If the defendant can prove that the court cannot exercise personal jurisdiction over the defendant, the suit cannot proceed. A special appearance must be the first response to a plaintiff's plea.

A plea to the jurisdiction is an objection to a court's subject-matter jurisdiction. Subject-matter jurisdiction refers to the court's ability to hear the case involved according to the type of case and the amount in controversy. Such a plea can be made at any time during the conduct of the suit and may be raised for the first time on appeal. A finding of lack of subject-matter jurisdiction is a fundamental issue and dismisses the case immediately if the court lacks such jurisdiction.

A motion for summary judgment is a motion to dispose of the merits of a case without trial. Litigants use this legal tool to ask a judge to evaluate the merits and evidence of a case without wasting the time and expense of trial. Motions for summary judgment are granted when a person who makes the motion proves by showing conclusive facts that there is no genuine disputed issue that is material to a court decision. Once the person making the motion proves this motion, the other litigant must dispute the facts. A motion also may be made if, after adequate time for discovery of facts in a case, no evidence is produced that supports the elements of a claim.

A temporary injunction is granted primarily where an applicant wants to restrain an act that would threaten the applicant with irreparable injury to real or personal property. An act a party performs during pending litigation that violates the rights of a person seeking an injunction may serve as grounds for granting this remedy.

DIGEST: CSHB 2581 would amend Civil Practice and Remedies Code, sec. 51.014 by creating deadlines for filing appeals of certain interlocutory orders.

To qualify for an automatic postponement of the beginning of the trial without penalty, CSHB 2581 would require that court interlocutory orders involving a denial of a motion for summary judgment, special appearance, or a plea to the jurisdiction be filed not later than the later of:

- ! the 100th day before the date of the first trial setting, or
- ! the 150th day after the date the defendant files the original answer or the first other responsive pleading.

An interlocutory appeal relating to the granting or denial of a temporary injunction or a motion to dissolve a temporary injunction, as described in Civil Practice and Remedies Code, chapter 65, would not stay the beginning of a trial while the appeal was being decided.

CSHB 2581 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

CSHB 2581 would eliminate a stalling technique used by many parties. Current law sets no deadlines for filing an interlocutory appeal. Therefore, some parties deliberately “sit” on a motion for a long time and, after the motion is denied, file an interlocutory appeal to extend pretrial litigation further. For example, some parties file a special appearance and sit on the motion through inactivity or continuances for 10 to 12 months. Upon denial of the motion, the party then files an interlocutory appeal on a weak claim, extending the period for a few months more. Under these circumstances, it could be more than a year before the merits of the case even would be considered in discovery.

CSHB 2581 would place timetables only on motions that come at the front end of the trial process. The merits of a motion for summary judgment for cases involving official immunity and free speech related to the media, special appearances, or pleas to jurisdiction should and can be decided quickly. This bill would not affect other issues that may emerge later in the trial process. Because temporary injunctions emerge at later stages of a trial, the exemption from the automatic stay provision is not an issue. Overall, CSHB 2581 would economize judicial resources, especially at a time when court dockets continue to swell.

**OPPONENTS
SAY:**

It is difficult to know the date of a trial setting more than 100 days in advance. This bill would require an attorney to predict the future in order to preserve a right to appeal a motion that could make or break the case. If the court delayed in making a ruling or a party required more time to prepare an adequate motion, the party would lose its ability to contest the decision on the motions. The bill would not leave it to the discretion of the court to extend the

deadline where justice would require an extended hearing process on a pretrial motion.

NOTES:

The committee substitute changed the original bill by adding the provision specifying that interlocutory appeals relating to motions for a temporary injunction would not stay the commencement of a trial.

A related bill, HB 2994 by Culberson, which would add a motion for summary judgment involving a controlling question of law as a new appealable interlocutory order, is pending in the House Civil Practice Committee. SB 273 by Fraser, which would add an interlocutory appeal of class certification as an appeal that would stay the proceeding of a trial, has been referred to the Senate Economic Development Committee's Technology and Business Subcommittee.