

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11- 9044

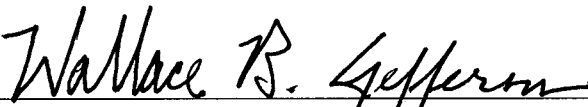
## APPROVAL OF LOCAL RULES FOR THE COURT OF APPEALS FOR THE FIRST COURT OF APPEALS DISTRICT OF TEXAS

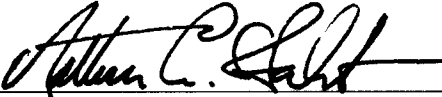
**ORDERED** that:

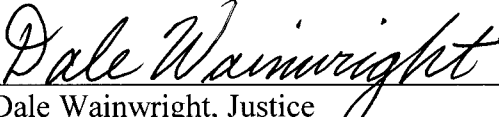
Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following amendments to the local rules for the Court of Appeals for the First Court of Appeals District of Texas, effective March 14, 2011. The procedures in the local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.

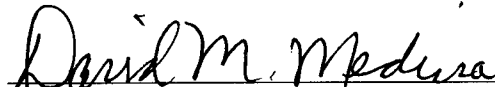
This Order supersedes and vacates the Order dated September 28, 2010, in Misc. Docket No. 10-9164.

Dated: March 11, 2011.


  
Wallace B. Jefferson, Chief Justice

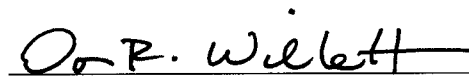
  
Nathan L. Hecht, Justice

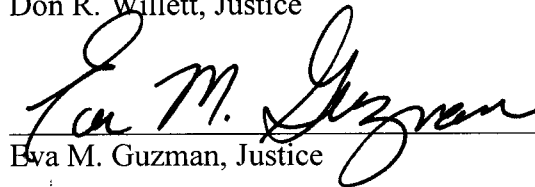
  
Dale Wainwright, Justice

  
David M. Medina, Justice

  
Paul W. Green, Justice

  
Phil Johnson, Justice

  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

## **First Court of Appeals Local Rules**

### **RULE 1. ASSIGNMENT OF RELATED CASES TO AND TRANSFERS OF RELATED CASES BETWEEN THE FIRST AND FOURTEENTH COURTS OF APPEALS.**

#### **Rule 1.1. Definitions.**

- (a) “Underlying case” means a trial court case number that is filed in one of the counties that comprise the jurisdiction of the First and Fourteenth Courts of Appeals and is subsequently the subject of either an appeal or original proceeding in the First or Fourteenth Court of Appeals.
- (b) “Related” means arising from the same underlying case or a case that has been remanded by either the First or Fourteenth Court of Appeals and includes cases severed from the main case.
- (c) “Previously filed” means that a case has been opened at either the First or Fourteenth Court of Appeals and that an appellate case number has been assigned to the underlying case.

#### **Rule 1.2. Assignment of Original Proceedings to either the First or Fourteenth Court of Appeals.**

- (a) Except as noted below, assignment of original proceedings must be alternated between the First and Fourteenth Courts of Appeals.
- (b) During the first six months of a calendar year, relators must first present any original proceeding to the clerk of the First Court of Appeals. During the last six months of a calendar year, relators must first present any original proceeding to the clerk of the Fourteenth Court of Appeals. Hereinafter, the “intake clerk” means the clerk receiving the original proceeding.
- (c) The intake clerk must log in each original proceeding sequentially, assigning original proceedings between the First and Fourteenth Courts of Appeals on an alternating basis.
- (d) If a related appeal or original proceeding has been previously filed in one of the courts, the intake clerk must assign the original proceeding in the manner provided for in Rule 1.3(a)-(b) below.

**Rule 1.3. Notice of and Assignment of Related Cases in Original Proceedings.**

- (a) At the time an original proceeding is filed in either the First or Fourteenth Court of Appeals, the relator must file a notice indicating whether any related appeal or original proceeding has been previously filed in either the First or Fourteenth Court of Appeals. The notice must include the caption, trial court case number, and appellate court case number of the related appeal or original proceeding.
- (b) If any related appeal or original proceeding has been previously filed in or assigned to either the First or Fourteenth Court of Appeals, the clerk of the appellate court receiving the original proceeding must assign it to the court of appeals in which the related appeal or original proceeding was previously filed.
- (c) If related appeals or original proceedings have been filed in both the First and Fourteenth Courts of Appeals, the clerk of the appellate court receiving the original proceeding must assign it to the court of appeals in which the most recent related appeal or original proceeding was previously filed or assigned.

**Rule 1.4. Notice of and Assignment of Related Cases in Appeals.**

- (a) At the time the notice of appeal is filed in the trial court, the notice of appeal must contain a statement indicating whether a related appeal or original proceeding has been previously filed in either the First or Fourteenth Court of Appeals and must include the caption, trial court case number, and appellate court case number of the related appeal or original proceeding.
- (b) If a related appeal or original proceeding has been previously filed in or assigned to either the First or Fourteenth Court of Appeals, the trial court clerk must assign the appeal to the court of appeals in which the related appeal or original proceeding was previously filed, pursuant to TEX. GOV'T CODE ANN. § 22.202(h) (Vernon 2004), which provides for companion cases to be assigned to the same court of appeals.
- (c) If related appeals or original proceedings have been previously filed in both the First and Fourteenth Courts of Appeals, the trial court clerk must assign the appeal to the court of appeals in which the most recent related appeal or original proceeding was previously filed or assigned, pursuant to TEX. GOV'T CODE ANN. § 22.202(h) (Vernon 2004), which provides for companion cases to be assigned to the same court of appeals.

## **Rule 1.5. Transfers of Related Cases Between the First and Fourteenth Courts of Appeals.**

- (a) The First or Fourteenth Court of Appeals may, either sua sponte or on motion of a party, transfer an appeal or an original proceeding to the other Houston court of appeals when a related appeal or original proceeding has been previously filed.
- (b) The transferring court must forward the case file, together with a transfer order, to the clerk of the transferee court. The clerk of the transferee court must docket the transferred appeal or original proceeding and must assign it a new appellate case number pursuant to TEX. R. APP. P. 12.1 and 12.2.

## **RULE 2. CLERK'S RECORD.**

Unless otherwise stated, all references to a rule herein are to the Texas Rules of Appellate Procedure.

### **Rule 2.1. Preparation of Clerk's Record.**

The trial court clerk must prepare and file the clerk's record in accordance with Rules 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one record in a case. To prepare the clerk's record, the trial court clerk must:

- (a) gather the documents required by Rule 34.5(a) and those requested by a party under Rule 34.5(b);
- (b) start each document on a new page;
- (c) include the date of filing on each document;
- (d) arrange the documents in ascending chronological order, by date of filing or occurrence;
- (e) start the page numbering **on the front cover of the first volume** of the clerk's record and **continue to number all pages consecutively** — including the front and back covers, tables of contents, certification page, and separator pages, if any — until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page;
- (f) prepare, label, and certify the clerk's record as required by this rule;
- (g) as far as practicable, include the date of signing by the judge on each order and judgment;
- (h) include on the front cover of the first volume of the clerk's record, whether filed in paper or electronic form, the following information, in substantially the following form:

**CLERK'S RECORD**

VOLUME \_\_\_\_ of \_\_\_\_

Trial Court Cause No. \_\_\_\_\_

In the \_\_\_\_ (District or County) Court

of \_\_\_\_\_ County, Texas,

Honorable \_\_\_\_\_, Judge Presiding

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\_\_\_\_\_, Plaintiff(s)

vs.

\_\_\_\_\_, Defendant(s)

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Appealed to the

(Supreme Court of Texas at Austin, Texas,

or Court of Criminal Appeals of Texas at Austin, Texas,

or Court of Appeals for the \_\_\_\_ District of Texas, at \_\_\_\_\_, Texas).

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Attorney for Appellant(s):

Name

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Address

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Telephone no.: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

SBOT no.: \_\_\_\_\_

Attorney for: \_\_\_\_\_, Appellant(s)

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Name of clerk preparing the clerk's record: \_\_\_\_\_

- (i) include on the front cover of the second and subsequent volumes of the clerk’s record the same information required under 2.1(h), in substantially the same form;
- (j) prepare and include after the front cover of the clerk’s record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk’s record, rather than in alphabetical order. If the clerk’s record consists of multiple volumes, the table of contents must indicate the page on which each volume begins. If the clerk’s record is filed in electronic form, the clerk **must use bookmarks to link each document description in the table of contents**, except descriptions of sealed documents, to the page on which each document begins; and
- (k) conclude the clerk’s record with a certificate in substantially the following form:

The State of Texas                    )  
 County of \_\_\_\_\_            )  
 I, \_\_\_\_\_, Clerk of the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas do  
 hereby certify that the documents contained in this record to which this  
 certification is attached are all of the documents specified by Texas Rule of  
 Appellate Procedure 34.5(a) and all other documents timely requested by a party  
 to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in \_\_\_\_\_, County,  
 Texas this \_\_\_ day of \_\_\_\_\_.  
   signature of clerk \_\_\_\_\_  
   name of clerk \_\_\_\_\_  
   title \_\_\_\_\_

If the clerk’s record is filed in electronic form, the trial court clerk’s login and password serves as the clerk’s signature on the certification page. The clerk also must include either a scanned image of the clerk’s signature or “/s/” and the clerk’s name typed in the space where the signature would otherwise appear.

**Rule 2.2. Filing an Electronic Clerk’s Record.**

The First Court of Appeals **prefers** the filing of clerk’s records in electronic form. When filing a clerk’s record in electronic form, the trial court clerk must:

- (a) scan each image in black and white with a resolution of 300 dots per inch (dpi) when filing electronic documents created as scanned images;

- (b) create electronic bookmarks to mark the first page of each document in the clerk's record;
- (c) limit the size of each computer file to 100 MB or less;
- (d) file each computer file in text-searchable Portable Document Format (PDF), compatible with the latest version of Adobe Reader;
- (e) include the following elements in the computer file name, exemplified as FortBend-DC-09-29-CLR-Vol001.pdf:
  - (1) county name without spaces between words;
  - (2) a hyphen;
  - (3) the trial-court cause number, preferably in the format the trial court uses for cause numbers;
  - (4) a hyphen;
  - (5) "CLR-Vol";
  - (6) the volume number as three digits with leading zeroes if needed;
  - (7) a period; and
  - (8) "pdf";
- (f) if there are multiple volumes in a clerk's record, use volume numbers pursuant to 2.2(e)(6) to identify the sequential order of the volumes (e.g., FortBend-DC-09-29-CLR-Vol001.pdf, FortBend-DC-09-29-CLR-Vol002.pdf, etc.);
- (g) if filing a sealed document, include a hyphen, the number of the sealed document, and the term "Sealed" after the term "CLR" in the computer file name (e.g., FortBend-DC-09-29-CLR-1Sealed.pdf, FortBend-DC-09-29-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk's record;
- (h) if filing a supplement to the clerk's record, include a hyphen, the number of the supplement, the term "Supp," and another hyphen after the term "CLR" in the computer file name (e.g., FortBend-DC-09-29-CLR-1Supp-Vol001.pdf, FortBend-DC-09-29-CLR-2Supp-Vol001.pdf); and
- (i) submit each computer file to the Texas Appeals Management and E-filing System web portal, using the guidelines on the First Court of Appeals' website.

### **Rule 2.3. Filing a Paper Clerk's Record.**

When filing a paper record, the trial court clerk must:

- (a) bind the documents together in one or more volumes with a top bound, two-inch capacity, two-and-three-quarter-inch, center-to-center removable fastener and no other binding materials, like wax, ribbon, glue, staples, tape, etc.;
- (b) include no more than 500 pages in each volume, or limit the thickness of each volume to a maximum of two inches;
- (c) include only one-sided copies in the clerk's record;
- (d) number the first volume "1" and each succeeding volume sequentially;



- (e) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and
- (f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

In the event of a material violation of this rule 2 in the preparation of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the trial court clerk to amend the clerk's record or to prepare a new clerk's record in proper form — and provide it to any party who has previously made a copy of the original, defective clerk's record — at the trial clerk's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

**RULE 3. ELECTRONIC REPORTER'S RECORD.**

- (a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules 34.6 and 35 of the Texas Rules of Appellate Procedure and the Uniform Format Manual for Texas Reporters' Records. Even if more than one notice of appeal or request for preparation of the record is filed, the court reporter or court recorder should prepare only one record in the case.
- (b) If proceedings were recorded stenographically, in lieu of filing the reporter's record of the proceedings on paper, the court reporter **must** file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System web portal, in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records and the guidelines posted on the First Court of Appeals' website.
- (c) In the event of a material violation of this rule in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter or court recorder to amend the reporter's record or to prepare a new reporter's record in proper form — and provide it to any party who has previously made a copy of the original, defective reporter's record — at the reporter's or recorder's expense. A court reporter who fails to comply with the requirements of the Uniform Format Manual for Texas Reporters' Records is also subject to discipline by the Court Reporters Certification Board.

**RULE 4. ELECTRONIC FILING OF DOCUMENTS.**

- (a) **ELECTRONIC FILING PERMITTED.** A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.

- (b) **E-filing mechanism.** E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.
- (c) **Electronic Service.** A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EPSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.
- (1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of courts.
- (2) If an e-filer must serve a copy of a document on a party who has not consented to e-service, the e-filer must comply with the service requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:
- (A) the party's lead counsel by email if the e-filer has an email address for the lead counsel; or
- (B) if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.

**(d) Redaction of information in e-filed document.**

- (1) Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The e-filer must redact all of this information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the e-filed document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.
- (2) The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.
- (3) If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.
- (4) On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.

- (e) **Format of e-filed document.** An e-filed document must be formatted as follows:
- (1) An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)–(e). The “paper” requirements in Rule 9.4(b)–(c) apply equally to a “page” of the e-filed document.
  - (2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. An EFSP will convert each e-filed document from its original form into a PDF file that complies with this rule.
  - (3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed Texas.gov’s size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.
  - (4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).
  - (5) An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.
  - (6) An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.
  - (7) The court may strike an e-filed document for nonconformance with this rule.

(f) **Signatures on e-filed documents.**

- (1) Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer's signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an "/s/" and the e-filer's name typed in the space where the e-filer's signature would otherwise appear or an electronic image of the e-filer's signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer's signature. The e-filer must not allow the e-filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.
- (2) If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).
- (3) If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.
- (4) When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.
- (5) If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the person who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an "/s/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.

(g) **Time of e-filing.** A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.

- (1) An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.
- (2) If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.
- (3) If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.
- (4) If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.

(h) **Paper copies.**

An e-filer must file 11 paper copies of an e-filed petition for discretionary review, four (4) paper copies of an e-filed brief, and three (3) paper copies of any e-filed petition other than a petition for discretionary review. The paper copies must be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the document is e-filed. An e-filer is not required to file any paper copies of any other e-filed document.

If a party opts not to e-file a document and to file the document in paper form instead, the original document filed with the court must be in the form provided by Rule 9.4 of the Texas Rules of Appellate Procedure. However, in lieu of filing the number of copies required by Rule 9.3(a)(1) of the Texas Rules of Appellate Procedure, the party must file only the original and one (1) copy of a motion, the original and four (4) copies of a brief, and the original and three (3) copies of a petition other than a petition for discretionary review. An original and 11 copies are still required for a petition for discretionary review.

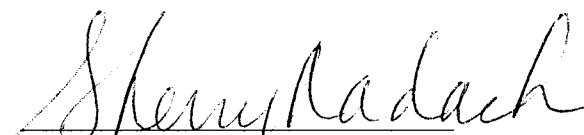
- (i) **Email address requirements and communications with the clerk.** An e-filed document must include the e-filer's email address, in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.
- (j) **Casemail registration.** Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.
- (k) **Construction of rules.** This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule.

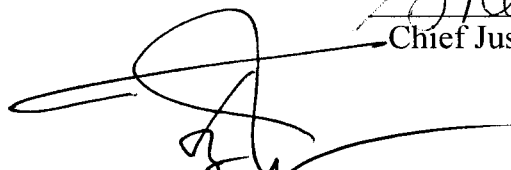
#### **RULE 5. SUSPENSION OF LOCAL RULES FOR ELECTRONIC FILINGS.**

Upon receipt of a motion or on its own initiative, the First Court of Appeals may, to expedite a decision or for other good cause, suspend a local rule pertaining to the filing of electronic records in a particular case and order a different procedure in accordance with the Texas Rules of Appellate Procedure.


**ORDER ADOPTING LOCAL RULES**

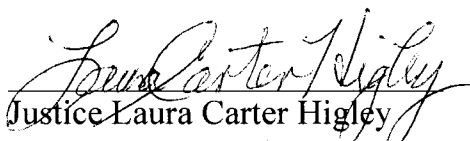
IT IS ORDERED that, effective February 17, 2011, these rules are adopted as local rules for the First Court of Appeals with the permission of the Supreme Court of Texas and the Texas Court of Criminal Appeals.

  
Chief Justice Sherry Radack

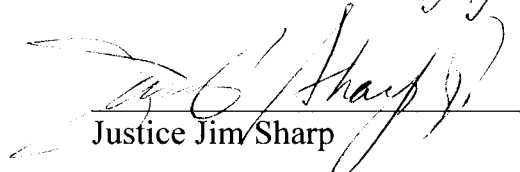
  
Justice Terry Jennings

  
Justice Evelyn V. Keyes

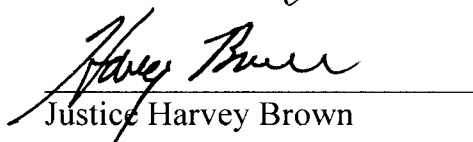
  
Justice Elsa Alcalá

  
Justice Laura Carter Higley

  
Justice Jane Bland

  
Justice Jim Sharp

  
Justice Michael Massengale

  
Justice Harvey Brown