

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 90-0020

APPROVAL OF LOCAL RULES OF APPELLATE PROCEDURE FOR THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

ORDERED:

Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court approves the following local rules, which have been submitted to this Court:

Local Rules of Appellate Procedure for the Court of Appeals for the Fifth District of Texas at Dallas

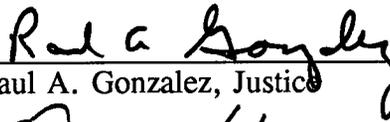
The approval of these rules is temporary, pending further orders of the Court.

SIGNED AND ENTERED this 26th day of November, 1990.


Thomas R. Phillips, Chief Justice

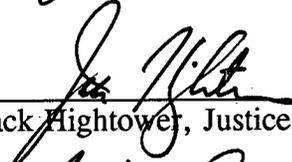
Franklin S. Spears, Justice

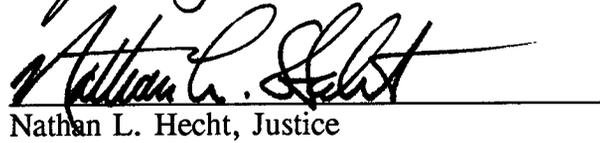

C. L. Ray, Justice


Raul A. Gonzalez, Justice


Oscar H. Mauzy, Justice


Eugene A. Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice



Court of Appeals
Fifth District of Texas at Dallas
Dallas County Courthouse
Dallas, Texas 75202-4658

CHIEF JUSTICE

CRAIG T. ENOCH

JUSTICES

WARREN WHITHAM

CHARLES BEN HOWELL

PAT McCLUNG

ANNETTE STEWART

GORDON ROWE

JAMES A. BAKER

SUE LAGARDE

LINDA THOMAS

ED KINKEADE

JOHN OVARD

JOE BURNETT

JOHN WHITTINGTON

KENNETH P. STRIPLING, CLERK

(214) 653-7382

October 10, 1990

The Supreme Court of Texas
P. O. BOX 12248
Capitol Station
Austin, Texas 78711

Dear Bill:

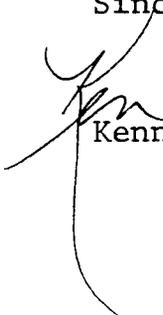
Per our conversation this date, please find enclosed a copy of our local rules. It is noted that they are not signed or dated awaiting approval (see paragraph 3). Also enclosed is a letter from Justice Kilgarlin dated April 25, 1988.

If the Supreme Court has approved of these rules, we would need something in writing for our administrative conference to adopt and the present Justices on the court to sign.

Bill, inasmuch as you are down there, would you mind asking the Court of Criminal Appeals if they have approved of our local rules. It would save me a long distance phone call.

Thank you for your help in advance.

Sincerely yours,


Kenneth P. Stripling



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

P.O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS 78711

CLERK
MARY M. WAKEFIELD

JUSTICES
FRANKLIN S. SPEARS
C. L. RAY
JAMES P. WALLACE
TED Z. ROBERTSON
WILLIAM W. KILGARLIN
RAUL A. GONZALEZ
OSCAR H. MAUZY
BARBARA G. CULVER

April 25, 1988

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
MARY ANN DEFIBAUGH

Honorable Craig T. Enoch
Chief Justice
Fifth Court of Appeals
Dallas County Courthouse
Dallas, Texas 75202-4658

Dear Craig:

I am in receipt of the Dallas Court of Appeals' local rules and am referring the matter to the Supreme Court Advisory Committee for its consideration. I'll let you know when I hear back from the Committee if there are any problems.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in dark ink.

William W. Kilgarlin

WWK:sm

ORDER CONDITIONALLY PROMULGATING NEW LOCAL RULES
OF APPELLATE PROCEDURE FOR THE COURT OF APPEALS
FOR THE FIFTH DISTRICT
OF TEXAS AT DALLAS

IT IS ORDERED by the Court of Appeals for the Fifth District of Texas at Dallas that the Local Rules are hereby conditionally adopted and promulgated to govern practice in the Fifth Court of Appeals.

IT IS FURTHER ORDERED that a copy of these rules shall be filed by the Clerk of this Court, for and in behalf and as the act of this Court.

IT IS FURTHER ORDERED that a copy of these rules shall be furnished to the Supreme Court and the Court of Criminal Appeals for approval and that they shall not be finally promulgated until approved by both courts and that they shall be finally promulgated on the condition of approval by the Supreme Court and the Court of Criminal Appeals.

IT IS FURTHER ORDERED that these rules shall be effective _____, 1988.

IT IS FURTHER ORDERED that these rules shall be recorded in the Minutes of this Court.

SIGNED AND ENTERED this ____ day of _____, 1988.

CRAIG TRIVELY ENOCH
CHIEF JUSTICE

BILL J. STEPHENS
JUSTICE

WARREN WHITHAM
JUSTICE

JOSEPH A. DEVANY
JUSTICE

CHARLES BEN HOWELL
JUSTICE

PAT McCLUNG
JUSTICE

ANNETTE STEWART
JUSTICE

GORDON ROWE
JUSTICE

NATHAN L. HECHT
JUSTICE

These rules have not been approved by the Supreme Court of Texas; they are, therefore, provided for informational purposes only.

JAMES A. BAKER
JUSTICE

SUE LAGARDE
JUSTICE

LINDA THOMAS
JUSTICE

ED KINKEADE
JUSTICE

PREFACE

So that they can be readily referenced, local rule numbers correspond as closely as possible to the Texas Rule of Appellate Procedure to which each relates.

To the extent that these rules may conflict with the Texas Rules of Appellate Procedure or any other statute or rule, the statute or rule controls.

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FIFTH COURT OF APPEALS
LOCAL RULES

Rule 1:1. Scope of Local Rules

These rules govern procedure for appeals, original proceedings, and other matters before the Court of Appeals for the Fifth District of Texas at Dallas. They are established pursuant to Texas Rule of Appellate Procedure 1(b). Each rule number is keyed to the rule of Appellate Procedure which that local rule concerns.

Rule 1:2. Relationship to Jurisdiction

These rules shall not be construed to extend or limit the jurisdiction of the Court. They are designed to aid the Court and the lawyer in the uniform application of statutes and rules in areas where the Court has rule-making discretion and otherwise where formulation of local policy is appropriate.

Rule 1:6. Communications with the Appellate Court

Correspondence or other communications relative to any matter before the Court should be conducted with the clerk and should not be addressed to or conducted with any of the justices or with any of the Court's staff. Do not ask to confer with a justice or panel of this Court unless counsel for the opposing party is present.

Counsel are expected to respond promptly to communications from this Court requiring responses. Counsel

are expected to serve copies of all relevant correspondence and other material upon opposing parties.

Rule 1:7. Motions to Withdraw as Counsel, Criminal Cases

(a) Retained Attorneys. Before a retained attorney's motion to withdraw as counsel will be entertained, there must be either:

(1) written approval by the client, including a declaration that the client will thereafter proceed pro se or through a named substitute attorney or

(2) a showing of due diligence by the attorney to secure cooperation of his or her client with a fee arrangement. Attached to the motion should be a copy of a letter, sent certified mail, return receipt requested (with copy of return), which informs the client of the following:

* after 10 days from the filing of the certification, the court will act on the motion to withdraw;

* any ensuing deadlines in the appeal;
and

* that he or she is withdrawing as counsel.

(b) Court-appointed Attorneys. The following requirements must be met before a court-appointed attorney's motion to withdraw as counsel will be entertained:

(1) If the client desires to represent himself or herself, the attorney must attach an affidavit from the client showing that he or she fully understands the inherent dangers of self-representation and that, if he or she is incarcerated, the court may not permit

the appellant to present oral argument. (The motion will not be granted if the attorney has already filed a non-frivolous brief.)

(2) If the client wants to substitute retained counsel, the motion must contain an affidavit to that effect from the client. Also, court-appointed counsel is responsible for seeing that retained counsel has filed a motion to substitute.

Rule 1:12. Monthly Report by Court Reporters

A copy of the court reporter's monthly report as contemplated by Texas Rule of Appellate Procedure 12(c) is to be filed with this Court before the first day of each month.

The report shall include:

1. a list of cases pending on appeal for which statements of fact are due;
2. the dates on which the written requests for the statements of fact were received;
3. the approximate number of pages and due dates for the statement of facts of each case; and
4. the names, addresses, and phone numbers of any substitute reporter for each case.

Rule 1:18 Withdrawal of Record on Appeal

(a) Checking out the Record. In civil cases not under submission, attorneys may check out the record from the clerk by completing a receipt. In criminal cases, records must be checked out through the district clerk's office. While a case is under submission, attorneys may not check out the

record except on the order of one of the justices of the Court. An attorney who checks out the record shall return it promptly to the Clerk on demand.

(b) Inmate Access to Record. Only in cases in which an inmate is pro se or counsel of record, or in which the inmate's attorney has filed a frivolous appeal brief pursuant to Anders v. California, 386 U.S. 738 (1967), will the Court grant a motion to allow the record to be made available to an imprisoned appellant.

Rule 1:19. Motions

(a) Oral Argument. Generally, no oral argument will be heard on motions. In extraordinary cases the panel to which the motion has been assigned may set the motion for oral argument on motion of any party or on the panel's own motion.

(b) Form Orders. Attorneys should not submit proposed orders.

(c) Bankruptcy. In the event that a case pending in this Court is stayed because of the filing of bankruptcy proceedings in federal court, counsel for the party in bankruptcy should immediately file a motion to stay proceedings. The motion should:

- (1) state by whom, in what court, and when the bankruptcy proceeding was filed,
- (2) include a certificate of service of the motion on all other parties to the cause in this Court, and
- (3) be verified by counsel.

When the requisites are met, the Court will enter an order abating the case.

In the event that any portion of the case in this Court is severable, counsel desiring severance should, as soon as possible, file a motion requesting severance.

Rule 1:44. Time for Filing Briefs in Appeals in Habeas Corpus and Bail, Criminal Cases

Unless otherwise ordered by the Court, in an appeal from a habeas corpus or bail proceeding in criminal cases, an appellant's brief is due approximately 10 days after the record is filed; the State's brief is due 7 days after appellant's brief is filed.

Rule 1:53. The Statement of Facts

(a) Prerequisite for Filing Statement of Facts. In civil cases the Court will not accept a statement of facts for filing unless the transcript has been filed. A statement of facts that is tendered before the transcript is filed shall be marked "received" by the clerk when tendered and, when the transcript is filed, the statement of facts shall be filed as of the date it was received.

(b) Failure to File a Complete Record in a Criminal Case. If the complete record has not been filed in this Court within the time allowed under the Texas Rules of Appellate Procedure or within any extended time granted by the Court, this Court may direct the trial court to hold a

hearing to determine whether the appellant has been deprived of a transcript and/or statement of facts because of ineffective counsel or for any other reason, to make findings of fact and conclusions of law, to take such measures as may be necessary to assure effective representation, which may include appointment of new counsel to an indigent appellant, and to transmit a record of the proceedings to this Court.

Notwithstanding the above, this Court may dispense with a hearing in the trial court if counsel files a motion supported by affidavits or other satisfactory evidence, in conformity with Texas Rules of Appellate Procedure 19(d), which provides the necessary facts regarding assistance of counsel and the late transcript or statement of facts. Under Texas Rule of Appellate Procedure 53(m) and Texas Rule of Appellate Procedure 83 this Court may order a late filing of the statement of facts or transcript.

(c) Sanctions of Court. Upon motion of any party for leave to file a petition for writ of mandamus meeting the requirements of Texas Rule of Appellate Procedure 121 or upon its own motion, the Court may compel completion of the appellate record or impose sanctions on the court reporter for failure to complete the record, by any remedy permitted by law or statute or by virtue of its inherent powers. For such purposes, this Court may also direct the court reporter to refrain from any further activity in the trial court or otherwise until a particular record has been completed. The

Court may direct the court reporter to pay the fee for the filing of the mandamus.

Rule 1:55. Amendment of the Record

(a) Effect of Objections to the Record on Brief Filing Deadlines. An objection to the record does not automatically extend time to file the brief. If an extension is desired, the attorney must request an extension. The briefing deadlines start from the date the record is filed. Filing a supplemental record does not alter the briefing deadlines, unless the attorney has requested, and been granted, an extension.

(b) Motions to Correct the Statement of Facts. Motions to correct inaccuracies in the statement of facts filed under Texas Rule of Appellate Procedure 55(a) must include either (1) a stipulation of the correct statement of the facts signed by the attorneys for the appellant and the appellee or State, or (2) a certification that the attorneys have sought to correct the inaccuracy by agreement and that no agreement could be reached.

Rule 1:59. Withdrawal of Appeal in a Criminal Case

A motion to withdraw an appeal in a criminal case may be granted as a matter of course by the Clerk without assigning it to a panel if it is signed by the appellant and the attorney or if it is verified by the appellant's affidavit.

Rule 1:70. Motions to Postpone Argument

In addition to the requirements set out in Texas Rule of Appellate Procedure 70, requests to postpone oral argument must be in writing and show extraordinary circumstances. Such a motion should be filed as far in advance of submission day as possible. Any motion to postpone oral argument must reasonably explain any delay in filing the motion, if the motion is not filed promptly after the movant has received notice of submission.

Rule 1:73. Motions for Extension of Time

(a) All requests for extension of time should be filed in this Court prior to the date the item in question is due to be filed.

Rule 1:74. Requisites of Briefs

(a) **General Format.** Counsel should carefully follow the requirements of Texas Rule of Appellate Procedure 74 which explains the requisites of briefs. Briefs should be typed on opaque paper no larger than 8 1/2 X 11 inches, bound securely at the left side. A brief longer than twenty-five pages should be bound in such a manner that the open brief will lie flat. All typewriting except block quotations should be double-spaced. Only as much quoted material as may be directly relevant should be included. Proper citation forms as provided by the latest editions of A Uniform System of Citation by Harvard Law Review, and Texas Rules of Form by Texas Law Review should be observed. Writ history and discretionary review history are necessary. In citing cases,

specific page citations to the pages where the relevant holdings or quotations may be found should be included.

(b) Page Limit. A brief shall be limited to 50 pages or less, unless leave is obtained from the Court to file a brief in excess of 50 pages. The Court may order rewriting of a brief of more than 50 pages or may consider only the first 50 pages of the brief.

(c) References to Record. When the brief refers to facts or testimony from the transcript or statement of facts, these statements should be followed by a reference to the specific page number in the record where the fact or testimony is found.

(d) Supplemental Briefs. Supplemental briefs may be filed without leave of court only if no new points of error are raised. An amended or reply brief may not be filed without leave of Court.

(e) Failure to File a Brief in a Criminal Case. If no brief has been filed within the time allowed under the Texas Rules of Appellate Procedure or within any extended time granted by the Court, the Clerk notifies counsel for appellant that the brief is overdue and that appellant is to file a brief or proper extension motion within ten days of the date of the notice. If no brief or proper extension motion is filed within that time, the Court directs the trial court to hold a hearing to determine why the brief has not been filed, whether the appellant desires to prosecute the

appeal, whether appellant is indigent, or if not indigent, whether retained counsel has abandoned the appeal, and to take such measures as may be necessary to assure effective representation, which may include appointment of new counsel to an indigent appellant. The trial court will be directed to make findings and recommendations and to transmit a record of the proceedings to this Court. Notwithstanding the above, this Court may dispense with a hearing in the trial court if counsel files a motion supported by affidavits or other satisfactory evidence, in conformity with Texas Rule of Appellate Procedure 19(d), which provides the necessary facts regarding appellant's desire to prosecute the appeal, assistance of counsel, and the late brief.

(f) Request for Oral Argument. A party desiring to present oral argument must make a notation to that effect in the upper right-hand corner of the outside cover page to his brief. Failure to do so means that the party has waived oral argument as of right, although the party may subsequently move for oral argument, which the Court, in its discretion, may grant.

Rule 1:75. Argument

(a) Oral Argument. The presiding justice may make a brief summary of the issues in each case before the argument begins. Counsel are expected to respond to questions from the bench and to assume that the justices have read the briefs but have not yet read the record.

The Court will consider all points of error properly raised in counsel's brief, even though counsel does not present an oral argument or does not argue certain points.

Unless additional time is granted before oral argument begins, counsel for appellant and appellee will each be limited to 30 minutes for oral presentation, and counsel for appellant will be limited to an additional 15 minutes for rebuttal. If there is more than one party for appellant or appellee, counsel shall be expected to announce to the Court, at the call of the docket, how such time is to be divided among the parties. If counsel for a particular party desires additional time for oral argument, a written request shall be filed with the clerk's office at the time such party's brief is filed, although the Court, upon reasonable explanation for a delayed filing, may consider a request filed not later than four days before the cause is set for oral submission; otherwise, the request for additional time will be deemed waived.

In civil cases, oral arguments are heard at a particular hour designated by the sitting panel. Generally, but not exclusively, oral arguments are heard at 9, 10, and 11 o'clock a.m., so far as practicable. Cases involving out-of-county counsel are heard no earlier than eleven o'clock a.m., so far as practicable.

In criminal cases, all counsel who have requested oral argument are expected to be present at 9 o'clock a.m. At

that time, the presiding justice calls the docket and determines which attorneys will argue. Oral argument is then heard, insofar as practicable, in the order that the cases appear on the submission docket for that date.

(b) Settlement Before Argument. In the event a case is settled pending appeal, counsel for appellant is requested to notify the Clerk immediately so that another case may be set. In addition, a proper motion to dismiss the appeal must be filed with the Court. The motion should state whether the parties desire the appeal to be dismissed, and should specify any agreement reached on allocation of the costs on appeal. If no motion is filed before the time oral argument is set, counsel for appellant must nonetheless appear at that time to announce the settlement; otherwise, the Court may dismiss the appeal for want of prosecution.

If the parties to an original mandamus or habeas corpus proceeding in a civil case desire to cancel a setting for oral argument because of a completed or pending settlement, the relator, with respondent's consent, must notify the Court in writing prior to submission. Unless evidence of settlement and disposition of the case is filed with the Clerk within ten days after the submission date, the case may be reset for submission and oral argument or may be dismissed for want of prosecution, according to the Court's discretion.

(c) Waiver of Oral Argument. In the event counsel decides to waive oral argument after such request has been

filed, such waiver must be made by written or oral communication to the Clerk of the Court of Appeals at the earliest practicable time prior to the date of submission.

(d) Post-submission Memoranda. Post-submission argument may be made in writing, if leave is obtained from the panel to whom the case is submitted. The Court will consider the promptness of the filing of the post-submission memoranda when exercising its discretion to grant leave to file.

(e) Argument by Law Students. Upon prior leave of Court, unlicensed law school students may be allowed to argue if they have a law student's temporary bar card.

Rule 1:76. Submission.

When an appeal or writ of error is set for submission, it is assigned to a panel. Such settings and assignments are made by the Clerk under supervision of the Chief Justice as nearly as practicable in order of when they come at issue, the oldest case at issue being set first, and considering the possible disqualification of the justices in individual cases and other special circumstances.

Rule 1:120. Habeas Corpus in Civil Cases

If the relator plans to rely on a statement of facts, the petition for writ of habeas corpus shall certify whether a written request for a statement of facts has been sent to the official court reporter. The petition shall also contain a statement regarding the expected preparation time for the

statement of facts. The petition shall also certify that no other petition for writ of habeas corpus has been submitted or is currently pending in any other court.

Rule 1:121. Mandamus, Prohibition, and Injunction

Every original proceeding shall contain a certification that the petition has not been filed in any other court of appeals.

LOCAL.RUL/cp