

IN THE SUPREME COURT OF TEXAS

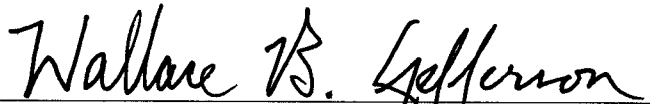
Misc. Docket No. 12- **9103**

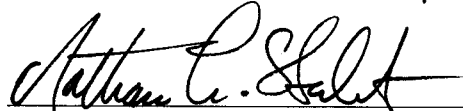
APPROVAL OF LOCAL RULES FOR THE COURT OF APPEALS FOR THE FIFTH COURT OF APPEALS DISTRICT

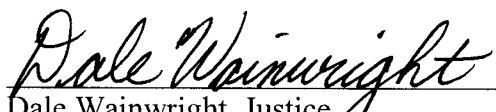
ORDERED that:

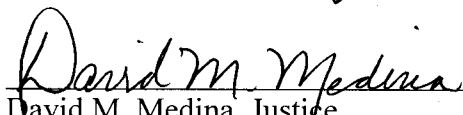
Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following local rules for the Fifth Court of Appeals. The procedures prescribed by these local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures;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


Dated: June ^{13th} 2012.

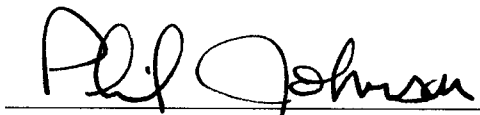

Wallace B. Jefferson, Chief Justice

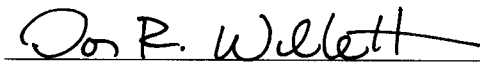

Nathan L. Hecht, Justice

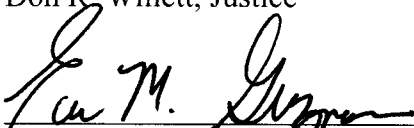

Dale Wainwright, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice


Eva M. Guzman, Justice



Debra H. Lehmann, Justice

Table of Rules

Rule 1. Scope of Local Rules

Rule 2. Change of address or other information

Rule 3. Electronic Filing

Rule 4. Withdrawal of Record on Appeal

Rule 5. Monthly Report by Court Reporters

Rule 6. Oral Argument

Rule 7. Settlement

Rule 8. Request for Temporary Relief in Original Proceedings

Rule 9. Number of Copies for Briefs

Rule 10. Briefs in cross-appeals

Rule 11. Clerk's Record in Civil Cases

Rule 12. Electronic Reporter's Record in Civil Cases

Rule 13. Suspension of Local Rules for Electronic Filings

Rule 1. Scope of Local Rules
(Tex. R. App. P. 1.2)

These rules govern procedure for appeals, original proceedings, and other matters before the Court of Appeals for the Fifth District of Texas at Dallas. In the event of a conflict between these local rules and the Texas Rules of Appellate Procedure or any other state statute or rule, the Texas Rules of Appellate Procedure, statute, or rule shall control.

Rule 2. Change of address or other information
(Tex. R. App. P. 9.1)

Counsel or a party proceeding pro se shall file a notice of change of address, telephone number, or facsimile number within ten (10) days of the date of the change. The notice shall include the style and cause number of any case the notifying party has pending before the Court.

Rule 3. Electronic Filings of Documents
(Tex. R. App. P. 9.2, 9.3)

*Any documents filed electronically outside of the Court's business hours
(8 a.m. – 5 p.m., Monday-Friday), or on weekends or holidays,
will not be reviewed until the Court's next business day.*

- a. **Electronic filing.** In civil cases, a party shall electronically file (e-file) all documents, including motions and briefs, except a document under seal or subject to a motion to seal. Persons in civil cases who are not represented by counsel may e-file documents, but e-filing is not required.

All parties in criminal cases may e-file documents, but e-filing is not required.

- b. **E-filing mechanism.** E-filing must be done through www.texas.gov/efiling, the portal established by the Texas Legislature. Directions for its use may be found on the www.texas.gov/efiling 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 www.texas.gov/efiling 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 www.texas.gov/efiling, 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 www.texas.gov/efiling 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 EFSP 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 www.texas.gov/efiling. Directions may be found on the www.texas.gov/efiling website.

1. Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary www.texas.gov/efiling 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 court.
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, without redaction. 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 www.texas.gov/efiling 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 both a "/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 3 paper copies of any brief e-filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the brief is e-filed. An e-filer is not required to file paper copies of any other e-filed documents.

- 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 www.texas.gov/efiling 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. vNotices registration.** Lead counsel must register for vNotices 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 4. Withdrawal of Record on Appeal
(Tex. R. App. P. 12.4)**

1. In criminal cases, the Court will not allow the record to be checked out. Records must be checked out through the District or County Clerk's office.
2. In civil cases, the record may be checked out as provided by Texas Rule of Appellate Procedure 12.4 except as amended by this rule or Court order.
 - a. Anyone may check out the record for no more than fourteen (14) days if no party's brief is due and in compliance with the restrictions of Texas Rule of Appellate Procedure 12.4. A record that is electronically filed will be

provided in CD format to the attorney of record.

- b. If the time for any party to file a brief is running, only the party whose brief is due may check out the record. If any party checks out the record before that party's brief is due, that party's brief will not be filed until the record is returned in proper condition.
- c. No one may check out the record once a case has been set for submission except by order of the Court.

Rule 5. Monthly Report by Court Reporters
(Tex. R. App. P. 13.4)

Court reporters must file a copy of the court reporter's monthly report required by Texas Rule of Appellate Procedure 13.4 with this Court before the first day of each month. The report shall include:

1. a list of cases pending on appeal for which reporter's records are due;
2. the dates on which the written requests for the reporter's records were received;
3. the approximate number of pages and due dates for the reporter's record in each case; and
4. the names, addresses, and phone numbers of any substitute reporters for each case.

Rule 6. Oral Argument
(Tex. R. App. P. 39)

1. In civil cases, oral arguments in each appeal are heard at the time designated by the sitting panel. As a general rule, one case will be set for oral argument each hour, beginning at 9:00 a.m. or 1:00 p.m.
2. In criminal cases, all counsel who have requested oral argument are expected to be present at 9:00 a.m. or 1:00 p.m. as instructed by written notice. At that time, the presiding justice will call the docket and determine which attorneys will argue. Oral argument will be heard, insofar as practicable, in the order the cases appear on the submission docket for that date.
3. If there is more than one appellant or appellee, counsel shall be expected to announce to the Court, at docket call, how the time is to be divided among the parties.
4. Oral argument will be limited to twenty (20) minutes for the appellant's opening argument, twenty (20) minutes for the appellee's argument, and five (5) minutes for the appellant's rebuttal. Requests for additional time must be made by written motion filed at least ten (10) days prior to the scheduled submission date.

Rule 7. Settlement
(Tex. R. App. P. 42.1)

In the event a civil case settles before submission, the parties shall notify the Clerk by filing an appropriate motion. The motion shall specify (1) the manner of disposition, and (2) the parties' agreement on the allocation of costs of appeal.

Rule 8. Request for Temporary Relief in Original Proceedings
(Tex. R. App. P. 52.10)

Relator must note on the front cover of the petition if temporary relief is requested.

Rule 9. Number of Copies for Briefs

A party must file an original and three (3) copies of any brief submitted to the Court.

Rule 10: Briefs in cross-appeals

1. In a civil appeal in which a cross-appeal has been timely filed, the briefs to be filed by the parties are:
 - a. The appellant's brief.
 - b. A combined appellee's and cross-appellant's brief.
 - c. A combined appellant's reply and cross-appellee's brief.
 - d. The cross-appellant's reply brief.
2. The aggregate number of pages for all briefs filed by any party may not exceed 125. The pages used to determine page limitations are those contained in appellate rule 38.4. The page limits are those set forth in appellate rule 38.4, except as provided for herein for the combined appellee/cross-appellant and appellant reply/cross-appellant's briefs. The combined appellee/cross-appellant's brief may be 100 pages, 50 pages for the appellee's portion and 50 pages for the cross-appellant's portion. The combined appellant's reply/cross-appellee's brief may be 75 pages, 25 for the reply brief and 50 for the cross-appellee's brief.
3. The deadlines for filing the briefs are:
 - a. The appellant's brief is due no later than thirty days after the date the record is filed with the Court.
 - b. The appellee/cross-appellant's brief is due no later than thirty days after the date the appellant's brief is filed.

- c. The appellant's reply/cross-appellee's brief is due no later than thirty days after the date the appellee/cross-appellant's brief is filed
 - d. The cross-appellant's reply brief is due twenty days after the date the cross-appellee's brief is filed.
4. If appellant or cross-appellant's appeal is dismissed and the appeal remains pending on the undismissed notice of appeal, the briefing schedule and page limitations will be as provided for in the rules of appellate procedure.
 5. The Court may change the requirements of this rule on its own motion or motion of any party to the appeal.

**Rule 11. Clerk's Record
(Tex. R. App. P. 34.5, 35)**

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

**Rule 11.1. Preparation of Clerk's Record
(Tex. R. App. P. 34.5, 35)**

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:

1. gather the documents required by Rule 34.5(a) and those requested by a party under Rule 34.5(b);
2. start each document on a new page;
3. include the date of filing on each document;
4. arrange the documents in ascending chronological order, by date of filing or occurrence;
5. 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;
6. prepare, label, and certify the clerk's record as required by this rule;

7. as far as practicable, include the date of signing by the judge on each order and judgment;
8. 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**

_____, **Plaintiff(s)**

vs.

_____, **Defendant(s)**

Appealed to the
(Supreme Court of Texas at Austin, Texas,
or Court of Appeals for the _____ **District of Texas, at** _____, **Texas).**

Attorney for Appellant(s):

Name _____

Address _____

Telephone no.: _____

Fax no.: _____

E-mail address: _____

SBOT no.: _____

Attorney for: _____, **Appellant(s)**

Name of clerk preparing the clerk's record: _____

9. include on the front cover of the second and subsequent volumes of the clerk's record the same information required under 12.1(h), in substantially the same form;
10. 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
11. 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 11.2. Filing an Electronic Clerk's Record

The Fifth 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:

1. scan each image in black and white with a resolution of 300 dots per inch (dpi) when filing electronic documents created as scanned images;
2. create electronic bookmarks to mark the first page of each document in the clerk's record;
3. limit the size of each computer file to 100 MB or less;
4. file each computer file in text-searchable Portable Document Format (PDF), compatible with the latest version of Adobe Reader;
5. include the following elements in the computer file name, exemplified as Dallas-DC-09-29-CLR-Vol001.pdf:
 - a. county name without spaces between words;
 - b. a hyphen;
 - c. the trial-court cause number, preferably in the format the trial court uses for cause numbers;
 - d. a hyphen;
 - e. "CLR-Vol";
 - f. the volume number as three digits with leading zeroes if needed;
 - g. a period; and
 - h. "pdf";
6. if there are multiple volumes in a clerk's record, use volume numbers pursuant to 12.2(e)(6) to identify the sequential order of the volumes (e.g., Dallas-DC-09-29-CLR-Vol001.pdf, Dallas-DC-09-29-CLR-Vol002.pdf, etc.);
7. 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., Dallas-DC-09-29-CLR-1Sealed.pdf, Dallas-DC-09-29-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk's record;
8. 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., Dallas-DC-09-29-CLR-1Supp-Vol001.pdf, Dallas-DC-09-29-CLR-2Supp-Vol001.pdf); and

9. submit each computer file to the Texas Appeals Management and E-filing System web portal, using the guidelines of the Fifth Court of Appeals' website.

Rule 11.3. Filing a Paper Clerk's Record

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

1. 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.;
2. include no more than 500 pages in each volume including the cover page;
3. include only one-sided copies in the clerk's record;
4. number the first volume "1" and each succeeding volume sequentially;
5. if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and
6. 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 12 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 12. Electronic Reporter's Record (Tex. R. App. P. 34.6, 35)

1. 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.
2. 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 Fifth Court of Appeals' website.

3. 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.

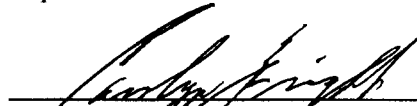
Rule 13. Suspension of Local Rules for Electronic Filings

Upon receipt of a motion or on its own initiative, the Fifth 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.

interoffice
MEMORANDUM

To: Texas Supreme Court and Texas Court of Criminal Appeals
From: Chief Justice Wright
Subject: Proposed Amendments to Fifth District Court of Appeals Local Rules
Date: June 5, 2012

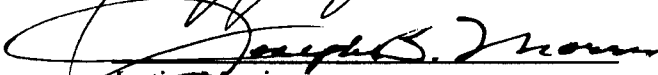
The Fifth District Court of Appeals has approved the attached amendments to the Court's local rules. Pursuant to appellate rule 1.2, the Court requests your presentation of the amendments to the Supreme Court and Court of Criminal Appeals for approval.



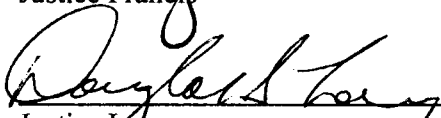
Chief Justice Wright



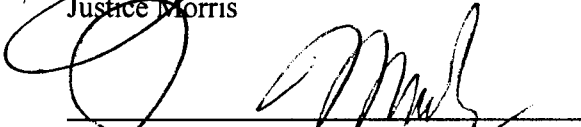
Justice Francis



Justice Morris



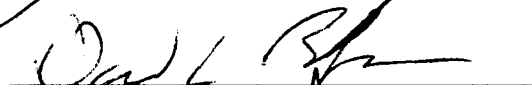
Justice Lang



Justice Moseley



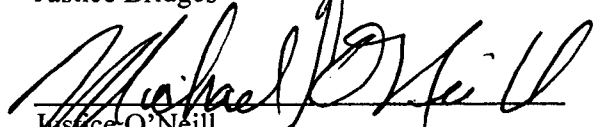
Justice Lang-Miers



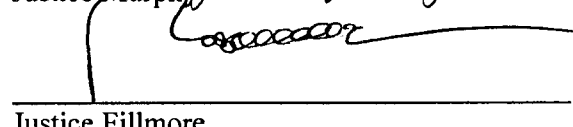
Justice Bridges



Justice Murphy



Justice O'Neil




Justice Fillmore



Justice FitzGerald



Justice Myers



Justice Richter