

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98- 9143

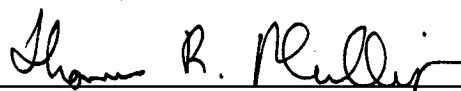
**APPROVAL OF LOCAL RULES FOR
THE FOURTH COURT OF APPEALS**

ORDERED that:

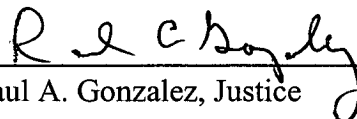
Pursuant to Rule 1.2(a) of the Texas Rules of Appellate Procedure, the Supreme Court approves the Local Rules for the Fourth Court of Appeals, San Antonio, Texas.

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

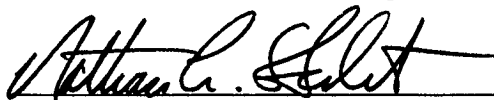
SIGNED AND ENTERED this 24th day of August, 1998.



Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice



Nathan L. Hecht, Justice



Craig T. Enoch, Justice



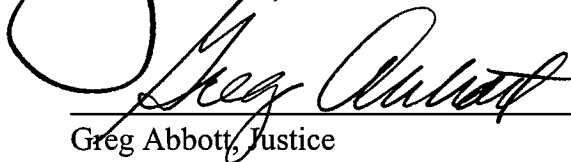
Rose Spector, Justice



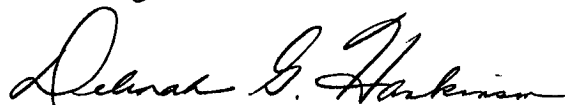
Priscilla R. Owen, Justice



James A. Baker, Justice



Greg Abbott, Justice



Deborah G. Hankinson, Justice



**FOURTH COURT OF APPEALS
Local Rules**

July 6, 1998

DRAFT

These rules have been prepared for the approval of the Supreme Court and Court of Criminal Appeals. The rules have not been adopted by the Fourth Court of Appeals.

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1. SCOPE OF LOCAL RULES

(TEX. R. APP. P. 1.2)

- 1.1 **Relationship to TEX. R. APP. P.** These rules supplement the procedures in the Texas Rules of Appellate Procedure and, unless otherwise specified, apply to both civil and criminal cases. If the Texas Rules of Appellate Procedure conflict with these local rules, the Texas Rules of Appellate Procedure govern.
- 1.2 **Relationship to Jurisdiction.** These rules do not extend or limit the jurisdiction of this Court, but failure to comply with these rules may result in the dismissal of an appeal after the Court gives the noncomplying party notice and a reasonable opportunity to cure.

Notes & Comments: The notes and comments appended to the local rules are not part of the rules. Instead, they reflect the Court's general procedures and preferences and are provided for the convenience of the public.

2. ALTERNATIVE DISPUTE RESOLUTION (ADR)

On a party's motion, or on the court's own initiative after reviewing the docketing statement, the Court may refer a civil case to alternative dispute resolution.

3. PAPERS GENERALLY

(TEX. R. APP. P. 9)

- 3.1 **Papers Filed Before the Docketing Statement.** If a document is filed in this Court before the appellant's docketing statement is filed, the certificate of service must include the names, addresses, and telephone numbers of each person served.
- 3.2 **Filing by Fax.** Documents of ten pages or less may be filed in this Court by fax. Documents may be faxed to the Court both during and after normal working hours. The Court is not responsible for events that disrupt, impair, or render impossible the receipt of documents transmitted by fax.

Notes & Comments: The Clerk will mail a file-marked copy of a document to any party who tenders an extra copy of the document and a postage-paid self-addressed envelope. The Court encourages parties to use the same method of service of a document on a party as is used in filing the document with the Court.

4. BANKRUPTCY AND OTHER STAYS IN CIVIL CASES

(TEX. R. APP. P. 8)

Any party may file a notice of bankruptcy or otherwise claim an automatic stay of the appeal as provided by federal or state law. The notice must be accompanied by an appropriate form of proof. The appeal will be abated and, for administrative purposes, treated as a closed case. However, the appeal may be reinstated on prompt motion of any party showing the stay has been lifted and specifying what further action, if any, is required from this Court.

5. DOCKETING STATEMENTS
(TEX. R. APP. P. 32)

- 5.1 Forms.** Each appellant must file a docketing statement and attach a signed copy of the judgment or order being appealed.
- 5.2 Time to File.** The docketing statement must be filed in the Fourth Court of Appeals when the notice of appeal is filed.

Notes & Comments: To assist the efficient handling of cases, the Court encourages appellants to accurately complete the docketing statements adopted by the Court. See Appendix A (civil appeals), Appendix B (ADR), and Appendix C (criminal appeals).

6. MOTIONS
(TEX. R. APP. P. 10, 26.3, & 38.6(d), 49, 41.1(c))

- 6.1 Number of Copies.** A party need only file an original and one copy of each motion.
- 6.2 Motions for Rehearing.** A motion for rehearing en banc must be filed separately from a motion for rehearing.

Notes & Comments: Motions for extension of time are no longer required to file the appellate record, but they may be used for filing briefs, including appellee's opening brief. The titles of motions should be descriptive and indicate whether agreed or opposed and whether emergency relief is requested. Proposed orders should not be submitted. Parties should not wait for the Court's ruling on a motion for extension of time but should meet all deadlines at the earliest possible date. Any objection to a visiting judge should be filed within ten days of the date the Clerk sends the parties notice that a visiting judge has been assigned to the appeal.

7. APPELLATE RECORD
(TEX. R. APP. P. 34 & 12.4)

- 7.1 Notice of Late Record.** If an official requires additional time to file a record, the official must request additional time from the Court using the form adopted by the Court. See Appendix D ("Official's Notice of Late Record"). Failure to file the record by the due date or according to the Court's directives will result in appropriate court action.
- 7.2 Withdrawal of the Record.**
- (a) *Attorneys of Record.* At any time before an appeal is set for submission, attorneys of record may withdraw all or part of a record without a motion for a period 14 days. After the Clerk sends the parties notice setting the appeal for submission, attorneys may review a record in the Court's offices only.
- (b) *Pro Se Parties.* Parties who are representing themselves and are not licensed attorneys may inspect a record only in designated areas within the Court's offices. However, the Court may grant a motion requesting permission to review the record on other terms.
- (c) *Protection of the Record.* The record must not be disassembled.

Notes & Comments: In addition to the hardbound copy of the record, the court reporter should provide a computer disk of the proceedings in ASCII format. The Court generally permits additional time to file a record, up to 60 days from the original due date. Any additional time may be permitted at the Court's discretion. Counsel is reminded that filing a supplemental record does not alter the briefing schedule. Counsel and trial court clerks are also reminded that documents sealed by order of the trial court or otherwise described by statute as confidential (such as juror information sheets) should be filed separately from unsealed portions of the record and should be accompanied by the sealing order, if any. This Court may also seal records if requested.

If a record is damaged by a party or attorney, the Court may order the record recertified and invoke any available remedy, including those provided by the Texas Penal Code. In criminal cases, the parties may use the copy of the appellate record filed with the trial court clerk in addition to the copy filed with this Court.

8. BRIEFS (TEX. R. APP. P. 38, 9, & 31.1)

- 8.1 Number of Copies.** A party need only file an original and three copies of a brief or a letter of additional citations, as addressed in Rule 8.3.
- 8.2 Time for Filing Briefs in Appeals in Habeas Corpus & Bail Proceedings.**
(a) *Appellant's Brief.* The appellant's brief must be filed no later than 20 days after the date the clerk's record or the reporter's record is filed, whichever is later.
(b) *State's Brief.* The State's brief must be filed no later than 20 days after the date the appellant's brief is filed.
- 8.3 Additional Citations.** A party may file a letter containing additional citations with succinct comment, at any time without leave of court.
- 8.4 Amendment or Supplementation.** If a party wishes to amend or supplement the party's brief other than in the manner permitted by Local Rule 8.3, the party must obtain the Court's permission.
- 8.5 Post-Submission Briefs.**
(a) *Requested by the Court.* If the Court requests a post-submission brief, the brief must be filed at the time indicated by the Court; or, if no time is specified, within ten days after the Court's request. An opposing party's reply to a post-submission brief requested by the Court must be filed no later than ten days after the date of the brief requested by the Court. If an additional post-submission brief is requested by the Court, the aggregate page limits contained in the Texas Rules of Appellate Procedure do not apply.
(b) *Not Requested by the Court.* If a party wishes to file a post-submission brief that has not been requested by the Court, the party must obtain the Court's permission.

Notes & Comments: Citations should use jump cites or pinpoint cites and should conform to the most recent editions of HARVARD L. REV., A UNIFORM SYSTEM OF CITATION (the Bluebook), and TEX. L. REV., TEXAS RULES OF FORM (the Greenbook). The Court encourages the use of appendices, especially for federal authorities not found in its own library. The reporter's record may be referred to as "RR" and the clerk's record as "CR." As a general rule, the Court will not give permission to file a brief containing additional issues or points of error after a case has been submitted to the Court for decision. The Court interprets the term "amended brief" to mean a brief that completely replaces the original brief. Pursuant to administrative order of the Court, the Clerk of the Court is authorized to attest to per curiam orders granting extensions of time to file briefs. The Court generally grants a requested extension of time to file a brief, up to 90 days from the original due date. Additional time may be granted at the Court's discretion. An appellant who is also in the position of appellee may request permission to file a combination brief.

9. ORAL ARGUMENT (TEX. R. APP. P. 39 & 40)

- 9.1 Time Allowed.** Oral argument will be limited to 20 minutes for the appellant's opening argument, 20 minutes for the appellee's argument, and ten minutes for the appellant's rebuttal.
- 9.2 Waiver.** Any party who requests oral argument and later decides to waive argument must notify the Court and the other parties in writing before the date set for submission.

- 9.3 Failure to Appear.** Any attorney or party who wishes to present argument must register in the Clerk's office 30 minutes before the time scheduled for argument and must also orally announce their appearance in the courtroom at the time scheduled for argument. If an attorney or party fails to comply with this rule, the Court will deem oral argument waived and may take any other appropriate action.
- 9.4 Tape Recordings.** The Court makes audio recordings of oral argument for its own use. However, a party may purchase a copy of the recording from the Clerk. The Court does not guarantee the tape will be clear or audible, and the Court will generally not grant a rehearing because the tape is not clear or audible.

Notes & Comments: If oral argument is waived, a case may receive expedited consideration. If an issue or point of error raised in a brief is not discussed at argument, the Court will nonetheless consider the issue or point of error preserved for appellate review. If an attorney or party intends to cite a case that is not contained in the briefs, the attorney or party should provide a copy of the case to the Clerk and opposing counsel before argument. The Court monitors the time during oral argument: the blue light on the podium indicates the party has five minutes remaining, and the red light indicates the party's time has expired.



THE SUPREME COURT OF TEXAS

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THOMAS R. PHILLIPS

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JAMES A. BAKER
GREG ABBOTT
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EXECUTIVE ASS'T
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ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

August 24, 1998

Chief Justice Phil Hardberger
Fourth Court of Appeals
Bexar County Justice Center
300 Dolorosa, Suite 3200
San Antonio, Texas 78205-3037

Dear Justice Hardberger,

Please find enclosed, a copy of the order of the Supreme Court that approved local rules for the Fourth Court of Appeals.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Hon. David Peeples

Mr. Herb Schaefer, Clerk
Fourth Court of Appeals

District Clerk

County Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict
Office of Court Admin

State Law Library