



COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI – EDINBURG

In 2010, the Corpus Christi Bar Association requested that local courts answer questionnaires regarding their practices and preferences, and the Thirteenth Court of Appeals participated in providing the requested information to the members of the bar association. Since that time, we have included that information on our website for the use of those practicing before the Court. In April 2022, the Court updated and expanded its responses to the questionnaire.

APPELLATE COURT QUESTIONNAIRE

1. How are panels selected/assigned? At the Thirteenth Court of Appeals, panels are randomly selected by lot on a quarterly basis beginning in September, which is the first month in the Court's fiscal year.
2. At what point is the justice who is to write the majority opinion selected/assigned? For the majority of appeals, cases are randomly assigned to a writing justice shortly after the appellant's brief is filed. Accordingly, extended delays in filing briefs or repeated motions for extension of time to file a brief are disfavored. Some specific types of cases, such as parental termination cases, permissive appeals, and original proceedings, are assigned to a writing justice when filed.
3. Do the justices prefer that CD or other electronic format of the brief, case law, etc. be provided in addition to the written brief? Like the other courts, the Thirteenth Court of Appeals routinely accepts electronic filings in accordance with the appellate rules. See *generally* TEX. R. APP. P. 9. The justices do not typically utilize or require briefs or case law provided in additional filing formats. Parties should contact the clerk for instructions regarding filing documents that are subject to a pending motion to seal, documents filed under seal, or documents to which access is otherwise restricted by law.
4. Are briefs read before oral argument? The briefs are always read by all panel members prior to oral argument. Some justices also use pre-submission

memoranda which summarize the legal issues, standards of review, and background facts for each case.

5. When and for what reason(s) does the Court accept supplemental briefs or arguments? The Court routinely accepts supplemental briefing or arguments when timely requested by the parties. *See id.* R. 38.7. The Court also occasionally directs supplemental briefing when an important issue needs more analysis. Supplemental briefing is most often suggested when the resolution of the appeal may be affected by recently issued opinions that were not addressed in primary briefing. The Court does not allow supplemental briefing that includes new or additional issues on appeal.
6. What is the Court's policy for granting/declining oral argument? The justice who is assigned to write the majority opinion recommends to the panel whether or not oral argument should be granted in accordance with Rule 39.1 based on a review of the briefs generally and particularly any statement therein regarding why oral argument should or should not be permitted. *See id.* R. 38.1(e), 39.1. The justice will also examine whether or not both appellant and appellee have requested oral argument, and may look to Rule 47.4, which distinguishes opinions from memorandum opinions, in making the determination regarding whether or not oral argument would be helpful in determining the appeal. *See id.* R. 47.4.
7. What is the Court's policy if a party asks for reconsideration of the Court's decision to decline oral argument? Any request for reconsideration should be made by motion. The authoring justice will reexamine the issue and recommend whether to grant or deny the motion for reconsideration, and then the motion will be circulated to the justices on the panel for their vote on the motion.
8. How are the Court's attorneys utilized by the justices? The Court's attorneys primarily assist the justices with legal research, analysis, writing, cite-checking, and general formatting of opinions. Their duties include researching and writing orders and memoranda on appeals and original proceedings, making recommendations on certain motions, participating in case conferences, making oral presentations to the justices regarding specific cases or legal issues, and performing routine administrative duties. Attorneys also review all draft opinions for which their justices sit on panel.
9. What is the Court's policy for designating an opinion as a "Memorandum Opinion"? Utilizing the factors listed in Rule 47.4, the authoring justice makes an initial recommendation regarding whether the opinion should be designated as a memorandum opinion or an opinion. *See id.* When the opinion goes through the circulation process to the panel attorneys and then on to the panel justices, those individuals have the opportunity to suggest whether the designation should

change. Ultimately, in accordance with Rule 47.2, the designation is made by a majority vote of the panel justices. See *id.* R. 47.2.

10. Does the Court permit use of visual aids prepared just for oral argument? The Court, in its discretion, may grant permission to use such visual aids. Parties should contact the Clerk of the Court in advance of oral argument for permission to use visual aids. However, parties should be aware that the Court will only consider the appellate record in determining the merits of the appeal.
11. If so, under what circumstances do the justices find PowerPoint or other types of visual presentations effective for use during appellate arguments? Visual presentations are useful in a broad variety of cases. They may be particularly useful when, e.g., resolution of an issue depends on determining a chronology of events, or the interaction between different statutes, or the relationship between different contractual provisions, or to clarify or emphasize critical points. They may also be useful in cases involving highly specialized fields or processes where background information or illustrations may be helpful, such as product liability cases.
12. What is the Court's practice for mediation of cases on appeal? The Court has a program for appellate mediation in civil cases which is, in part, governed by the Alternative Dispute Resolution/Mediation section of the parties' docketing statements. Any party may file a motion asking for appellate mediation, or the Court may sua sponte refer a case to mediation.
13. What are the justices' recommended dos and don'ts, pet peeves, unwritten rules and/or preferences for the conduct of attorneys and their manner of presentation during oral argument? The Court has read the briefs and performed preliminary research, so do not merely re-argue your brief. Make sure that your briefs and statements made at oral argument correctly represent the record and the law. If a member of the Court asks you a question, answer it. If you are unable to answer a question, consider asking for leave to file a post-submission brief in response to the question. Consider utilizing demonstrative evidence. If citing a case that is not contained in your brief, furnish copies of the case to the members of your panel, opposing counsel, and the clerk. Obtain permission to file any subsequent briefs. Do not ask to reset oral argument unless it is absolutely necessary. Notify the Court with a written motion as expeditiously as possible if you are requesting to reset or cancel oral argument. Do not wait until submission day to notify the Court if there are any circumstances that prevent a justice on your panel from hearing your case.