



COURT OF APPEALS
SECOND DISTRICT OF TEXAS

CHIEF JUSTICE
TERRIE LIVINGSTON

JUSTICES
LEE ANN DAUPHINOT
ANNE GARDNER
SUE WALKER
BOB McCOY
BILL MEIER
LEE GABRIEL

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In 2004, the Appellate Section of the State Bar of Texas and the Second Court of Appeals worked together to identify key information needed by appellate attorneys and pro se litigants to practice effectively before the court. To assist the court in this effort, the Appellate Section collected and formatted the relevant information and published it in the *Appellate Advocate* in February 2005. *This information was updated by the court in July 2014, and the court intends to keep the information current for the use of persons with matters before the court.*

Internal Operating Procedures—Second District Court of Appeals (Fort Worth)

July 2014

The Basics

1. Court's Address: Tim Curry Criminal Justice Center, 401 W. Belknap Street, Suite 9000, Fort Worth, Texas 76196
2. Telephone number: Phone: (817) 884-1900, Fax: (817) 884-1932
3. Website address: <http://www.2ndcoa.courts.state.tx.us>
4. Names of Justices: Chief – Terrie Livingston, Lee Ann Dauphinot, Anne Gardner, Sue Walker, Bob McCoy, Bill Meier, and Lee Gabriel.
5. Chief Staff Attorney: Lisa West
6. Clerk of the Court: Debra Spisak
7. General Counsel: Clarissa Hodges
8. Local Rules (L.R.): The court has published written local rules and unpublished written internal administrative rules and operating procedures. The local rules are available on this court's website and at the clerk's office counter and were last revised effective April 28, 2014.
9. The court has original jurisdiction over appeals and original proceedings from the following counties: Archer, Clay, Cooke, Denton, Hood, Jack, Montague, Parker, Tarrant, Wichita, Wise, and Young.

The Ins and Outs

PROCEDURE	WHAT AND HOW TO FILE	HOW HANDLED	COURT'S PARTICULAR PRACTICES	SPECIAL NOTES
E-filing	<p>Effective January 1, 2014, attorneys in civil and criminal cases must e-file all documents (except a document under seal or subject to a motion to seal) with the court through the EFileTexas electronic filing system at www.efiletexas.gov. Tex. R. App. P. 9.2(c)(1), (3).</p> <p>Persons who are not represented by an attorney may, but are not required to, e-file documents. Tex. R. App. P. 9.2(c)(1).</p> <p>Paper copies of documents that must be e-filed will not be accepted except in an emergency with the court's permission. Tex. R. App. P. 9.2(c)(1), (3).</p>	<p>All documents in appeals or original proceedings, including appendices, must be redacted in accordance with Tex. R. App. P. 9.8–.10. Redaction pointers for e-filed documents are available at the Supreme Court's website. It is the parties' responsibility, not the court's, to ensure that documents filed with the court are properly redacted. Nevertheless, the court may require a document to be corrected and resubmitted if, upon screening, a clerk discovers unredacted sensitive data, as defined in the rules of appellate procedure and guidelines posted on the court's website. See also Tex. Fam. Code Ann. §§ 56.01(j), 109.002(d).</p>		<p>The court prefers that the first page of any e-filed document be numbered page 1, and that all subsequent page numbers are sequential, so that the page numbers on the document correspond with the page numbers shown in the pdf reader software used by the court to view electronic documents.</p> <p>Because of an inherent delay in a document's being uploaded to an electronic service provider and that document's being reviewed and accepted by the clerk's office for filing, the court strongly encourages parties requesting emergency relief to call the clerk's office before or immediately after filing a document requiring emergency action so that the document may be processed and circulated to the court expeditiously.</p>
Motions	<p>Original only if e-filed.</p> <p>If allowed to paper file, original and one copy. L.R. 3.A.</p> <p>Certificate of conference required on all motions, except motions for rehearing.</p>	<p>Motions filed before a panel is assigned and that may be decided by a single justice are decided by the administrative justice. If the administrative justice requests that a panel be assigned to a particular motion, the motion will be submitted to that panel. After a panel is</p>	<p>Agreed motions are submitted when filed. Contested motions (other than motions for extension or emergency motions) are held for 10 days before submission to the court. See Tex. R. App. P. 10.3(a).</p> <p>Both presubmission motion panels and appeal panels are set in the</p>	<p>All motions are considered and decided any day of the week. Rulings on motions for rehearing are announced on Thursdays.</p> <p>All motions for extensions of time in criminal cases must state whether the appellant is incarcerated.</p>

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	<p>L.R. 3.B.</p> <p>The court will draft its own orders.</p>	<p>assigned to a case, motions are submitted to the panel or head of panel, depending on the nature of the motion. See Tex. R. App. P. 10.4(a).</p> <p>First motions for extension of time to file briefs requesting 30 days or less —20 days or less in accelerated appeals (except parental termination and child protection cases as defined in Tex. R. App. P. 28.4(a)(2))—are generally handled by the clerks and are granted upon a reasonable explanation of the need for an extension. Tex. R. App. P. 10.5(b)(1)(C). Subsequent motions or motions asking for more than 30 days —20 days in accelerated appeals (except parental termination and child protection cases as defined in Tex. R. App. P. 28.4(a)(2))—are submitted to the court and disfavored without a reasonable explanation of the need for additional time.</p> <p>Parental termination and child protection cases are assigned an author and panel when the notice of appeal is received, so the author or panel decides all motions in accordance with Tex. R. App. P. 10.4. Motions to extend may be granted</p>	<p>spring for the following fiscal year. Motion panels change every 6 weeks except for late June through August when they change weekly; the administrative justice changes on a rotating basis every 6 weeks from September through late June and weekly thereafter through the end of August.</p>	<p>L.R. 3.C.</p>

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		upon a reasonable explanation of need but in shorter increments, in light of the Supreme Court's 180-day guideline for disposition in such cases. Tex. R. Jud. Admin. 6.2(a).		
Record	<p>The court notifies the parties, clerks, and reporters of the due date in accordance with Tex. R. App. P. 35.</p> <p>Motions to extend are filed by clerks and reporters directly with the court.</p>	<p>Except in parental termination and child protection cases as defined in Tex. R. App. P. 28.4(a)(2), first motions to extend for 30 days or less—10 days or less in accelerated cases—are generally handled by the clerks. First motions asking for more than 30 or 10 days and subsequent motions are submitted to the administrative justice unless a panel has been assigned, in which case the motion will be submitted to the justice who is head of panel.</p> <p>All motions to extend in parental termination and child protection cases are submitted to the author.</p>		<p>Under Tex. R. App. P. 35.3(c), each extension granted may not exceed 30 days in regular appeals and 10 days in accelerated appeals.</p> <p>The court receives the majority of clerk's and reporter's records via e-filing, with two exceptions: (1) when the court requests that a sealed record be paper filed and (2) when the court grants an exceptional request by a clerk or reporter to file all or part of the appellate record via paper or other physical media.</p> <p>In parental termination and child protection cases, extensions may not exceed 30 days total and may not be granted in all appeals. Tex. R. App. P. 28.4(b)(2).</p>
Briefs	<p>Original only if e-filed.</p> <p>If allowed to paper file, original and 4 copies of brief. L.R. 1.B. If paper appendix bound separately, original and 4 copies of appendix as well. L.R. 1.B.</p>	<p><u>Appeals:</u> The court uses the filing deadlines in Tex. R. App. P. 38.6(a)–(c), but those dates are not set until the complete record is filed. The parties are notified by letter of the filing dates. L.R. 1.E. Up to 7 days before submission of the appeal, the court will also</p>	<p>Unless requested by the court, all amended, supplemental, post-submission, and letter briefs must be accompanied by a motion for leave to file. L.R. 1.C.</p> <p><u>Cross-Appeals:</u> Unless otherwise notified by the court, cross appellants must file their cross-</p>	<p>Under Tex. R. App. P. 9.8–10, a child may be identified only by initials or pseudonym in a brief or original proceeding petition; documents in the brief or petition AND any appendices (text, headers, and footers inclusive) must be redacted to protect the child's identity.</p>

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	<p>Computer-generated briefs must include the word count certification required by Tex. R. App. P. 9.4(i)(3).</p> <p>The court prefers that any hyperlinking to authorities be to Westlaw. The court does not have a subscription to Lexis. Items in the brief may be hyperlinked so long as they otherwise comply with the rules of appellate procedure and this court's local rules.</p> <p>Items in appendices must be redacted in accordance with Tex. R. App. P. 9.8–10. The court will consider an improperly redacted appendix noncompliant and will require the brief to be resubmitted.</p> <p>Items that are most helpful in an appendix include legislative history, any case with only a Lexis citation, and foreign law, if applicable.</p>	<p>accept, without a motion for leave, a further responsive brief. L.R. 1.C.</p> <p><u>Original Proceedings:</u> Generally, the court sets a 10-day deadline if it requests a response and a 5-day deadline for any reply. Sometimes circumstances warrant a shorter or longer deadline. L.R. 2.B.</p>	<p>appellants' brief on the due date for the appellants' brief unless the court permits otherwise.</p>	<p>The court requires that references to parents and other persons from whose names a child may be identified (e.g., relatives or foster parents) also use initials or pseudonyms also. L.R. 7.</p> <p>Although it is the filer's responsibility, not the court's, to ensure that documents filed with the court are properly redacted, the court will require a brief or petition in an original proceeding to be corrected and resubmitted if, upon screening, a clerk discovers unredacted sensitive data anywhere in the brief or petition (including text, headers, titles, footnotes, and the appendix). Tex. R. App. P. 9.9, 9.10.</p> <p>Currently, the court does not post any briefs or motions filed by parties on its website. Only correspondence, orders, opinions, and other documents generated by the court are currently posted.</p>
Case Assignment		<p><u>Appeals:</u> Generally, a panel is assigned when the appellee's brief is filed. Occasionally, an appeal that includes the same or similar issues as a prior appeal or original proceeding in the case will be assigned to the same panel, but not necessarily the same author,</p>	<p>The court has a rotation cycle to achieve different compositions of panels. Justices are reassigned every 6 weeks from September through June.</p> <p>Panel members occasionally conference before argument/submission and almost</p>	<p>Permissive appeal applications and accelerated mental health appeals under the Health & Safety Code are assigned a panel when filed.</p>

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		<p>as the prior appeal or original proceeding.</p> <p>In parental termination and child protection appeals, a panel is assigned when the notice of appeal is received.</p> <p><u>Original Proceedings:</u> A panel is assigned at the time of filing. If a response is requested, the order will identify the panel.</p>	<p>always immediately after oral argument. If neither party requests oral argument, the opinion may be drafted prior to conference.</p> <p>Parties are notified of an appeal's submission date and panel by letter when the appellee's brief is filed. Panels may change without further notice unless the court assigns a visiting justice to a case.</p>	
Oral Argument	Request oral argument on first page of the brief. Tex. R. App. P. 38.1(e).	<p>When oral argument is granted, the court allots 15 minutes per side and a 5 minute rebuttal for appellant/relator.</p> <p>Allotment of more time is at the discretion of the court. A request for additional time must be made by motion 10 days before oral argument. L.R. 4.B.</p>	<p><u>Appeals:</u> Requests for oral argument are not automatically honored. In certain categories of cases, requests are screened by the assigned author's staff attorney, who makes a recommendation regarding oral argument. The assigned author then decides whether to grant oral argument. The factors considered in determining whether to grant oral argument include whether the decisional process would be significantly aided by argument. Tex. R. App. P. 39.1.</p> <p>If an appeal is ordered submitted without argument, the court will consider an objection by a party requesting argument in its discretion. There is no filing fee for an objection to the denial of oral argument.</p> <p><u>Original Proceedings:</u> The panel decides whether to grant oral argument.</p>	<p>If only one side requests oral argument, the court will decide whether both sides will argue or whether the case will be submitted on the briefs. Tex. R. App. P. 39.1, 39.7, 39.8.</p> <p>The court generally does not set cases for oral argument during July and August except for selected original proceedings, accelerated appeals, and parental termination/child protection appeals.</p>

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Voting		Typically, voting occurs immediately after oral argument for cases submitted with argument and for most non-oral argument cases submitted that same day. In some non-oral argument cases, the panel votes after reading the briefs and a draft of the opinion prepared by the assigned author.	Except during July and August, the court has a pre-set weekly submission docket that includes cases submitted both orally and on briefs.	
Opinions		<p>Internal guidelines recommend that the author circulate an initial draft to panel members no later than 6 months after submission. The guidelines suggest that each panel member has 14 days to sign off on the draft, request a panel conference, or note that he or she intends to draft a concurrence or dissent. The panel member then has 60 days to circulate the draft of a concurrence or dissent. Additional time is allowed for subsequent opinion drafts.</p> <p>The court endeavors to circulate opinions, including concurrences and dissents, in accelerated appeals and original proceedings on a shorter timetable.</p> <p>Parental termination and child protection cases should be issued within 180 days of the filing of the notice of appeal so</p>	<p>Author is chosen on a rotation cycle by the clerk's office.</p> <p>For most appeals, the author is assigned approximately 21 days before submission. In original proceedings, permissive appeals, mental health appeals, parental termination and child protection appeals, and appeals from the denial of pretrial applications for writ of habeas corpus in criminal cases, the author is assigned when the proceeding is filed.</p>	<p>The court generally releases its opinions on Thursdays. Opinions in original proceedings are handed down on any day. The proposed opinion (including concurrences and dissents) is circulated to the panel first and then to the entire court.</p>

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		<p>far as reasonably possible; therefore, the internal guidelines for circulation of opinions in those types of cases are greatly reduced. Tex. R. Jud. Admin. 6.2(a).</p>		
<p>Motions for Rehearing</p>	<p>Original only if e-filed.</p> <p>Original and one copy only if allowed to paper file. L.R. 3.A.</p> <p>No certificate of conference is required.</p> <p>Computer-generated motions must include the word count certification required by Tex. R. App. P. 9.4(i)(3).</p> <p>A motion for rehearing or a motion for en banc reconsideration must include a copy of this court's opinion and judgment. L.R. 3.D.</p>	<p>The court cannot grant rehearing unless a response to a motion for rehearing has been filed or requested. Tex. R. App. P. 49.2. In rare circumstances, the court may choose to issue a corrected opinion sua sponte.</p> <p>The court prefers that a motion for en banc reconsideration be filed in a separate document than a motion for panel rehearing. Tex. R. App. P. 49.7.</p>		<p>Motions for en banc reconsideration are circulated to the original panel first, then to the entire court. The court may sit en banc without a request, but does so rarely.</p>
<p>Original Proceedings</p>	<p>Original only if e-filed.</p> <p>If allowed to paper file, original and 4 copies of all documents, including appendices. Only one original of a reporter's record need be filed. L.R. 2.A.</p>	<p>Once filed, an original proceeding is immediately assigned a panel and author, and the author's staff attorney prepares a recommendation to the panel. All justices on the panel are immediately provided copies of the petition after it is processed by the clerks.</p> <p>If a motion requesting emergency relief is also filed, it is circulated immediately and</p>	<p>Granting emergency relief requires the agreement of 2 of the 3 panel members. In extremely rare circumstances, a single justice may grant—but not deny—emergency relief.</p>	<p>Oral argument requires a vote of 2 out of 3 of the panel members.</p> <p>Currently, original proceedings panels change every 3 weeks, except from late June through August, when the panel changes weekly.</p>

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		<p>dealt with ASAP. If there is no motion for emergency relief, the original proceeding is addressed as soon as possible within the normal course of business.</p> <p>Because of an inherent delay in a document's being uploaded to an electronic service provider and that document's being reviewed and accepted by the clerk's office for filing, the court strongly encourages parties to call the clerk's office before or immediately after filing a document requiring emergency action so that the document may be processed and circulated to the court expeditiously.</p>		

Technology

1. Currently, the court subscribes only to Westlaw.
2. The court prefers citations from both U.S. and S. Ct. reporters.
3. The court accepts fax filings only from parties allowed to paper file and only for motions and letters. The fax filings must be less than 10 pages, excluding the cover page. L.R. 9.B.1. If a filing fee is required for a motion, an order will not be issued until the filing fee is paid.
4. The court distributes its orders and opinions electronically to all parties who have provided the court with an email address and may occasionally do so by fax. L.R. 5.A.
5. The court circulates all e-filed most motions (except some first motions for extension listed above) directly and as soon as possible to the appropriate justice or justices for review.
6. The court records oral arguments digitally and posts them on its website. If sensitive information, such as the name of a child, is inadvertently recorded during an oral argument, the court may, on its own motion, decline to post that particular argument.

Appellate Mediation

1. The court has a program for appellate mediation. If the court determines that at least one of the parties has indicated an interest in mediation, the court will generally order the parties to mediate unless another party objects. Interested parties must complete the applicable part of the docketing statement.
2. The responsibility to oversee appellate mediation rotates every 6 weeks among the justices except from late June through August when it rotates weekly.
3. Any contact with the court regarding mediation must be through the clerk's office.
4. The court allows the parties to select their own mediator.
5. If parties cannot agree on a mediator, either the administrative justice (if the case has not been assigned to a panel) or the justice who is head of the panel selects the mediator.
6. The court maintains a list of local attorneys who have expressed an interest to the court in serving as mediators that the justice may consult.

Fees

1. Appeal: \$195 (civil only); Permissive Appeal application \$195
2. Original Proceeding: \$145
3. Motions: \$10 (civil only); Motions for Rehearing \$15 (civil only)
4. Response to Motion and Objection to Denial of Oral Argument: no fee
5. Other fees: Copies are \$0.10 per page for the first 50 pages and \$0.50 per page for all pages over 50; certified copies are \$1.00 per page (\$5.00 minimum); copies of oral arguments before September 2, 2008 are \$3.00 per CD; the retrieval fee for a case in storage is \$38.66; the shipping fee to send a case to the Supreme Court (if requested) is \$15.00; and the fee for an exhibit tendered for oral argument is \$25.00.
6. Each party to a case may request and will be provided, free of charge, one CD with an electronic copy of the appellate record. Sealed records, however, will be made available to the parties upon a motion, in a manner specified by order of the court.

E-Filing

For more information on e-filing of documents, including the appellate record, please see the Electronic Filing News link under the Practice Before the Court heading on this court's website.

Miscellaneous

1. A party who is not required to e-file may file a paper copy of a document after court business hours with a justice who is willing to accept it. Tex. R. App. P. 9.2(a)(2). To set up after hours filing, call the clerk's office during business hours if possible. Outside of normal business hours, call the after-hours number listed in the court's phone recording.
2. The court uses visiting judges as often as necessary within budget limitations.
3. The court rarely decides to sit en banc. The court may be convened en banc for the purposes of hearing or rehearing any case on the Chief Justice's own motion or upon a motion supported by a majority of the court. The court hears an average of 3 cases a year en banc.
4. The court encourages a party seeking emergency relief to advise the clerk's office via telephone that an emergency matter has or imminently will be filed.