

# IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 13-2

## AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

### ORDERED that:

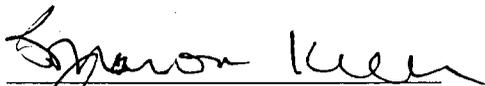
1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 6, 9, 68, and 73, the Appendix: Application for a Writ of Habeas Corpus, and Appendix G are amended, effective January 1, 2014.

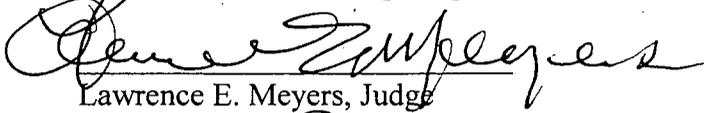
2. Pursuant to Texas Rule of Appellate Procedure 34.4, the Court of Criminal Appeals orders that the appellate record in criminal cases be in the form specified as attached.

3. The Clerk is directed to file a copy of this Order with the Secretary of State and the Texas Register, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

4. These amendments may be changed in response to public comments received before November 30, 2013. Any interested party may submit written comments directed to Abel Acosta, Clerk of the Court, at P.O. Box 12308, Austin, TX 78711, or [abel.acosta@txcourts.gov](mailto:abel.acosta@txcourts.gov).

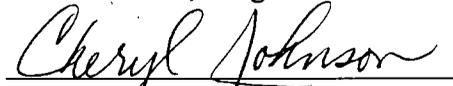
SIGNED AND ENTERED this 18th day of September, 2013.

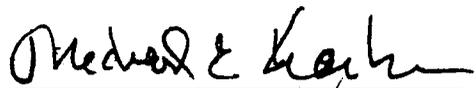
  
Sharon Keller, Presiding Judge

  
Lawrence E. Meyers, Judge

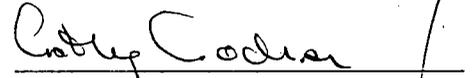
  
Tom Price, Judge

  
Paul Womack, Judge

  
Cheryl Johnson, Judge

  
Michael Keasler, Judge

  
Barbara Hervey, Judge

  
Cathy Cochran, Judge

  
Elsa Alcala, Judge

## Amendments to Rule 6, Texas Rule of Appellate Procedure

### **Rule 6. Representation by Counsel**

#### **6.1. Lead Counsel**

...

- (c) *How to Designate.* The original or a new lead counsel may be designated by filing a notice stating that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. If a new lead counsel is being designated, both the new attorney and either the party or the former lead counsel must sign the notice.

#### **6.2. Appearance of Other Attorneys**

An attorney other than lead counsel may file a notice stating that the attorney represents a specified party to the proceeding and giving that attorney's name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number. The clerk will note on the docket the attorney's appearance. When a brief or motion is filed, the clerk will note on the docket the name of each attorney, if not already noted, who appears on the document.

## Amendments to Rule 9, Texas Rule of Appellate Procedure

### **Rule 9. Papers Generally**

#### **9.1. Signing**

- (a) *Represented Parties.* If a party is represented by counsel, a document filed on that party's behalf must be signed by at least one of the party's attorneys. For each attorney whose name appears on a document as representing that party, the document must contain that attorney's State Bar of Texas identification number, mailing address, telephone number, ~~and~~ fax number, if any, and email address.
- (b) *Unrepresented Parties.* A party not represented by counsel must sign any document that the party files and give the party's mailing address, telephone number, and fax number, if any. If an unrepresented party files a document electronically, the document must also contain the party's email address.
- (c) *Electronic Signatures.* A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

- (1) a “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized, sworn, or requires the signature of opposing counsel; or
- (2) an electronic image or scanned image of the signature.

## 9.2. Filing

- (a) *With Whom.* A document is filed in an appellate court by delivering it to:
  - (1) the clerk of the court in which the document is to be filed; or
  - (2) a justice or judge of that court who is willing to accept delivery. A justice or judge who accepts delivery must note on the document the date and time of delivery, which will be considered the time of filing, and must promptly send it to the clerk.
- (b) *Filing by Mail.*
  - (1) **Timely Filing.** A document received within ten days after the filing deadline is considered timely filed if:
    - (A) it was sent to the proper clerk by United States Postal Service first-class, express, registered, or certified mail;
    - (B) it was placed in an envelope or wrapper properly addressed and stamped; and
    - (C) it was deposited in the mail on or before the last day for filing.
  - (2) **Proof of Mailing.** Though it may consider other proof, the appellate court will accept the following as conclusive proof of the date of mailing:
    - (A) a legible postmark affixed by the United States Postal Service;
    - (B) a receipt for registered or certified mail if the receipt is endorsed by the United States Postal Service; or
    - (C) a certificate of mailing by the United States Postal Service.
- (c) *Electronic Filing.* ~~Documents may be permitted or required to be filed, signed, or verified by electronic means by order of the Supreme Court or the Court of Criminal Appeals, or by local rule of a court of appeals. A technical failure that precludes a party’s compliance with electronic-filing procedures cannot be a basis for disposing of any case.~~

- (1) Requirement. Attorneys in civil cases must electronically file documents. Attorneys in criminal cases must electronically file documents except for good cause shown in a motion filed in the appellate court. Unrepresented parties in civil and criminal cases may electronically file documents, but it is not required.
  - (2) Mechanism. Electronic filing must be done through TexFile, the electronic filing manager established by the Office of Court Administration.
  - (3) Exceptions. Documents filed under seal, subject to a pending motion to seal, or to which access is otherwise restricted by law or court order must not be electronically filed. For good cause, an appellate court may permit a party to file other documents in paper form in a particular case.
  - (4) Timely Filing. A document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:
    - (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
    - (B) if a document requires a motion and an order allowing its filing, it is deemed filed on the date the motion is granted.
- If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.
- (5) Confirmation of Filing. TexFile will send a filing confirmation notice to the filing party.
  - (6) Electronic Notices From the Court. If a party files documents electronically, the clerk may send any required notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

### **9.3. Number of Copies; ~~Electronic Copies~~**

- (a) *Courts of Appeals.*
  - (1) ~~Paper Copies in General.~~ Document Filed in Paper Form. If a document is not electronically filed, ~~A~~ a party must file: the original and one unbound copy of the document unless otherwise required by local rule. The unbound copy of an appendix must contain separator pages instead of tabs.

~~(A) the original and three copies of all documents in an original proceeding;~~

~~(B) the original and two copies of all motions in an appellate proceeding; and~~

~~(C) the original and five copies of all other documents.~~

- (2) Electronically Filed Document. No paper copies of an electronically filed document must be filed unless otherwise required by local rule or requested by the court.

~~Local Rules. A court of appeals may by local rule require:~~

~~(A) the filing of more or fewer paper copies of any document other than a petition for discretionary review; and~~

~~(B) an electronic copy of a document filed in paper form.~~

- (b) *Supreme Court and Court of Criminal Appeals.*

(1) ~~Paper copies of Document Filed in Paper Form. If a document is not electronically filed, A~~ a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

~~(2) Electronic Copies of Documents Filed in Paper Form. An electronic copy of a document filed in paper form may be required by order of the Supreme Court or the Court of Criminal Appeals.~~

~~(3)~~(2) ~~Paper Copies of Electronically Filed Document. Paper C~~copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within ~~one business day~~ three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.

- (c) *Exception for Record.* Only the original record need be filed in any proceeding.

#### 9.4. Form

Except for the record, a document filed with an appellate court, including a paper copy of an electronically filed document, must — unless the court accepts another form in the interest of justice — be in the following form:

- (a) *Printing.* A document may be produced by standard typographic printing or by any duplicating process that produces a distinct black image. For a paper document, Printing may be on both sides of the paper.
- (b) *Paper Type and Size.* The paper on which ~~the a~~ document is produced must be 8½ by 11 inches, white or nearly white, and opaque. ~~Paper must be 8½ by 11 inches.~~
- (c) *Margins.* ~~Papers~~ Documents must have at least one-inch margins on both sides and at the top and bottom.
- (d) *Spacing.* Text must be double-spaced, but footnotes, block quotations, short lists, and issues or points of error may be single-spaced.
- (e) *Typeface.* A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.
- (f) *Binding and Covering.* A paper document must be bound so as to ensure that it will not lose its cover or fall apart in regular use. A paper document should be stapled once in the top left-hand corner or be bound so that it will lie flat when open. A paper petition or brief should have durable front and back covers which must not be plastic or be red, black, or dark blue.
- (g) *Contents of Cover.* A document's front cover, if any, must contain the case style, the case number, the title of the document being filed, the name of the party filing the document, and the name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number of the lead counsel for the filing party. If a party requests oral argument in the court of appeals, the request must appear on the front cover of that party's first brief.
- (h) *Appendix and Original Proceeding Record.* An paper appendix may be bound either with the document to which it is related or separately. If separately bound, the appendix must comply with paragraph (f). An paper record in an original proceeding or a paper appendix should must be tabbed and indexed. An electronically filed record in an original proceeding or an electronically filed appendix that includes more than one item must contain bookmarks to assist in locating each item.
- (i) *Length.*

- (1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.
- (2) Maximum Length. The documents listed below must not exceed the following limits:
  - (A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.
  - (B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.
  - (C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.
  - (D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.
  - (E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.
- (3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

- (4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.
- (j) Electronically Filed Documents. An electronically filed document must:
    - (1) be in text-searchable portable document format (PDF);
    - (2) be directly converted to PDF rather than scanned, if possible;
    - (3) not be locked;
    - (4) be combined with any appendix into one computer file, unless that file would exceed the size limit prescribed by TexFile; and
    - (5) otherwise comply with the Technology Standards promulgated by the Judicial Committee on Information Technology and approved by the Supreme Court.

~~(j)~~(k) *Nonconforming Documents.* ~~Unless every copy of a document conforms to these rules~~ If a document fails to conform with these rules, the court may strike the document and return all nonconforming paper copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. The substitute document must be deemed filed on the same day as the document that was struck. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind.

## 9.5. Service

- (a) *Service of All Documents Required.* At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding. But a party need not serve a copy of the record.
- (b) *Manner of Service.* Service on a party represented by counsel must be made on that party's lead counsel. Service may be personal, by mail, by commercial delivery service, ~~or~~ by fax, or electronically, if the party being served has consented to electronic service with the party's electronic service provider. Attorneys required to electronically file documents under these rules must consent to electronic service. Electronic service must be performed through TexFile, using a certified electronic service provider. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served.
- (c) *When Complete.*
  - (1) Service by mail is complete on mailing.

- (2) Service by commercial delivery service is complete when the document is placed in the control of the delivery service.
  - (3) Service by fax is complete on receipt.
  - (4) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. TexFile will send confirmation of service to the serving party.
- (d) *Proof of Service.* A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.
- (e) *Certificate Requirements.* A certificate of service must be signed by the person who made the service and must state:
- (1) the date and manner of service;
  - (2) the name and address of each person served; and
  - (3) if the person served is a party's attorney, the name of the party represented by that attorney.

#### **9.10 Privacy Protection for Documents Filed in Criminal Cases.**

- (a) *Sensitive Data Defined.* Sensitive data consists of those trial exhibits, documents, or other materials for which there is a compelling need for privacy that greatly outweighs the public interest in unrestricted access to the trial record. Such data include, but are not limited to:
- (1) pornographic exhibits and materials;
  - (2) autopsy photographs and crime scene photographs depicting the victim;
  - (3) autopsy, medical, or other reports and documents that contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person;
  - (4) photographs, videos or other depictions of children or victims of crime, the dissemination of which would threaten to compromise their personal privacy or safety;
  - (5) juror information cards and juror lists;

- (6) pre-sentence investigation reports; and
  - (7) social security or other taxpayer-identification numbers, numbers of bank accounts, credit cards, or other financial instruments, numbers on a driver’s license, passport or other government-issued identification cards.
- (b) *Sealing of Sensitive Data.* Sensitive data shall be sealed. Any person may request that certain material be identified as sensitive, or the trial court may, on its own motion, declare that certain material is sensitive. The trial judge shall first determine whether that material is sensitive and then shall order sensitive data to be physically sealed or redacted from the rest of the record. Such data shall not be electronically filed with the appellate court, and the appellate courts shall not make such sensitive data publicly available on the internet. Sealed or redacted sensitive data shall be placed in a manila envelope marked “sealed” with a general description of the records, their filing date, and the date they were sealed or redacted. If sealed sensitive data is sent to the appellate court, it shall be transmitted physically rather than electronically.
- (c) *Redaction of Sensitive Data.* Any attorney or party must redact sensitive data by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed material during the pendency of the appeal and any related proceedings filed within three years of the date that the judgment is signed. If a district court clerk or appellate court clerk discovers unredacted sensitive data in the record, the clerk shall not electronically scan that material without first notifying the parties and seeking a ruling from the trial court. An order directing that records be sealed or redacted shall be electronically accessible to the extent that such disclosure does not reveal the information that the court sought to protect in issuing the order.
- (d) *Access to Sensitive Data.* Sensitive data that has been sealed may be accessed by the parties and their attorneys under the supervision of the district clerk or the clerk of the appellate court. Other persons may request access to the sensitive data by filing a motion for access with the trial court. The decision on a motion to redact, seal, or unseal sensitive data may be reconsidered, altered or amended by the trial court at any time. When the court issues an order disclosing otherwise sealed records, it shall place appropriate limitations on the dissemination of that information.

#### **Rule 68.4      Contents of Petition**

A petition for discretionary review must be as brief as possible. It must be addressed to the “Court of Criminal Appeals of Texas” and must state the name of the party or parties applying for review. The petition must contain the following items:

- (a) *Identity of Judge, Parties, and Counsel.* The petition must list the trial court judge, all parties to the judgment or order appealed from, and the names and addresses of

all trial and appellate counsel.

- (a) (b) *Table of Contents.* The petition must include a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each ground or question presented for review.
- (b) (c) *Index of Authorities.* The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.
- (c) (d) *Statement Regarding Oral Argument.* The petition must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived. If a reply or cross-petition is filed, it likewise must include a statement of why oral argument should or should not be heard.
- (d) (e) *Statement of the Case.* The petition must state briefly the nature of the case. This statement should seldom exceed half a page. The details of the case should be reserved and stated with the pertinent grounds or questions.
- (e) (f) *Statement of Procedural History.* The petition must state:
- (1) the date any opinion of the court of appeals was handed down, or the date of any order of the court of appeals disposing of the case without an opinion;
  - (2) the date any motion for rehearing was filed (or a statement that none was filed); and
  - (3) the date the motion for rehearing was overruled or otherwise disposed of.
- (f) (g) *Grounds for Review.* The petition must state briefly, without argument, the grounds on which the petition is based. The grounds must be separately numbered. If the petitioner has access to the record, the petitioner must (after each ground) refer to the page of the record where the matter complained of is found. Instead of listing grounds for review, the petition may contain the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions should be short and concise, not argumentative or repetitious.
- (g) (h) *Argument.* The petition must contain a direct and concise argument, with supporting authorities, amplifying the reasons for granting review. See Rule 66.3. The court of appeals' opinions will be considered with the petition, and statements in those opinions need not be repeated if counsel accepts them as correct.
- (h) (i) *Prayer for Relief.* The petition must state clearly the nature of the relief sought.
- (i) (j) *Appendix.* The petition must contain a copy of any opinion of the court of appeals.

## Rule 73. Postconviction Applications for Writs of Habeas Corpus

### 73.1 Form of for Application in Felony Case (Other Than Capital) Filed Under Article 11.07 of the Code of Criminal Procedure

(a) *Prescribed Form.* An application filed under Article 11.07 ~~for post conviction habeas corpus relief in a felony case without a death penalty, under Code of Criminal Procedure article 11.07,~~ must be ~~made in~~ on the form prescribed by the Court of Criminal Appeals ~~in an order entered for that purpose.~~

(b) *Availability of Form.* The district clerk of the convicting court county of conviction ~~will~~ shall make the forms available to applicants on request, without charge.

(c) *Contents.* The ~~person making the application~~ applicant or petitioner must provide all information required by the form. The ~~application form~~ must include ~~specify~~ all grounds for relief; and ~~must~~ set forth in summary fashion the facts supporting each ground. Any ground not raised on the form will not be considered. ~~The application must not cite cases or other law.~~ Legal citations and arguments may be made in a separate memorandum. The ~~application form~~ must be computer-generated, typewritten, or legibly handwritten legibly.

(d) *Length.* Each ground for relief and supporting facts raised on the form shall not exceed the two pages provided for each ground in the form. The applicant or petitioner may file a separate memorandum. This memorandum shall comply with these rules and shall not exceed 15,000 words if computer-generated or 50 pages if not. If the total number of pages, including those in the original and any additional memoranda, exceed the word or page limits, an application may be dismissed unless the convicting court for good cause shown grants leave to exceed the prescribed limits. The prescribed limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate of compliance.

(e) *Typeface.* A computer-generated memorandum must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

(f) *Certificate of compliance.* A computer-generated memorandum, including any additional memoranda, must include a certificate by the applicant or petitioner stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(dg) *Verification.* The application must be verified by either:

- (1) oath made before a notary public or other officer authorized to administer oaths; or
- (2) if the person making the application is an inmate in the Institutional Division of the Department

of Criminal Justice or in a county jail, an unsworn declaration in substantially the form required in Civil Practices and Remedies Code chapter 132.

~~73.2 *Non-compliance Applications.* The clerk of the convicting court will not file an application that is not on the form prescribed by the Court of Criminal Appeals, and will return the application to the person who filed it, with a copy of the official form. The clerk of the Court of Criminal Appeals may, without filing an application that does not comply with this rule, return it to the clerk of the convicting court, with a notation of the defect, and the clerk of the convicting court will return the application to the person who filed it, with a copy of the official form.~~ dismiss an application that does not comply with these rules.

~~73.3 *Summary Sheet Duties of District Clerk.*~~

(a) The district clerk of the county of conviction shall accept and file all Code of Criminal Procedure article 11.07 applications.

(b) In addition to the duties set out in Article 11.07, the clerk shall do the following:

(1) If the convicting court enters an order designating issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of that order.

(2) When findings of fact and conclusions of law are made, a copy of those findings and conclusions shall immediately be sent to all parties in the case. A party has ten days from the date he receives the findings to file objections, but the trial court may, nevertheless, transmit the record to the Court of Criminal Appeals before the expiration of the ten days.

(3) When a district clerk transmits the record in a postconviction application for a writ of habeas corpus under Code of Criminal Procedure articles 11.07 or 11.071, the district clerk must prepare and transmit a summary sheet that includes the following information:

(a) the convicting court's name and county, and the name of the judge who tried the case;

(b) the applicant's name, the offense, the plea, the cause number, the sentence, and the date of sentence, as shown in the judgment of conviction;

(eC) the cause number of any appeal from the conviction and the citation to any published report;

(dD) whether a hearing was held on the application, whether findings of fact were made, any recommendation of the convicting court, and the name of the judge who presided over the application;

(E) the name of counsel if applicant is represented.

The Court of Criminal Appeals may by order adopt a form of summary sheet that the district clerks must use.

(4) The district clerk shall also include in the record transmitted to the Court of Criminal Appeals, among any other pertinent papers or supplements, the indictment or information, any plea papers, the court's docket sheet, the court's charge and the jury's verdict, any proposed findings of fact and conclusions of law, the court's findings of fact and conclusions of law, any objections to the court's findings of fact and conclusions of law filed by either party, and the transcript of any hearings held.

(5) On the 181<sup>st</sup> day from the date of receipt of the application by the State, the district clerk shall forward the writ record to this Court unless the district court has received an extension of time from the Court of Criminal Appeals.

73.4 Time Frame for Resolution of Claims Raised in Application. Within 180 days from the date of receipt of the application by the State, the convicting court shall resolve any issues that the court has timely designated for resolution. Any motion for extension of time must be filed in the Court of Criminal Appeals before the expiration of the 180-day period.

73.45 Action on Application. --The Court may deny relief based upon its own review of the application or may issue such other instructions or orders as may be appropriate.

**APPENDIX C  
IN THE COURT OF CRIMINAL APPEALS OF TEXAS  
ORDER DIRECTING  
THE FORM OF THE APPELLATE RECORD IN CRIMINAL CASES**

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 34.4, the Court of Criminal Appeals orders that the appellate record in criminal cases be in the form specified below:

**RULE 1 CLERK'S RECORD**

**1.1. Preparation of Electronic or Paper Clerk's Record.**

The trial court clerk must prepare and file the clerk's record in accordance with Rules of Appellate Procedure 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 consolidated record in a case. To prepare the clerk's record, the trial court clerk must:

- (a) gather the documents required by Rule of Appellate Procedure 34.5(a) and those requested by a party under Rule of Appellate Procedure 34.5(b);
- (b) start each document on a new page;
- (c) include the date of filing on each document;
- (d) arrange the documents in ascending chronological order, by date of filing or occurrence;
- (e) 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;
- (f) prepare, label, and certify the clerk's record as required by this rule;
- (g) as far as practicable, include the date of signing by the judge on each order and judgment;
- (h) include on the front cover of the first volume, and any subsequent volumes, 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)

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Appealed to the

(Supreme Court of Texas at Austin, Texas,

or Court of Criminal Appeals of Texas at Austin, Texas,

or Court of Appeals for the \_\_\_\_\_ District of Texas, at \_\_\_\_\_, Texas).

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Attorney for Appellant(s):

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone no.: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

SBOT no.: \_\_\_\_\_

Attorney for: \_\_\_\_\_, Appellant(s)

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Name of clerk preparing the clerk's record: \_\_\_\_\_

(i) 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

(j) 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 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.

### **1.2. Filing an Electronic Clerk's Record.**

The clerk of a court subject to mandatory civil or criminal electronic filing must file the record electronically. The clerk of any other court must file the record electronically, if possible. When filing a clerk's record in electronic form, the trial court clerk must:

- (a) file each computer file in text-searchable Portable Document Format (PDF);
- (b) create electronic bookmarks to mark the first page of each document in the clerk's record;
- (c) limit the size of each computer file to 100 MB or less, if possible;
- (d) directly convert, rather than scan, the record to PDF, if possible;
- (e) comply with the Technology Standards promulgated by the Judicial Committee on Information Technology;
- (f) include the following elements in the computer file name, exemplified as FortBend-DC-09-29-CLR-Vol001.pdf:

- (1) county name without spaces between words;
  - (2) a hyphen;
  - (3) the trial-court cause number, preferably in the format the trial court uses for cause numbers;
  - (4) a hyphen;
  - (5) “CLR-Vol”;
  - (6) the volume number as three digits with leading zeroes if needed;
  - (7) a period; and
  - (8) “pdf”;
- (g) if there are multiple volumes in a clerk’s record, use volume numbers pursuant to 1.2(f)(6) to identify the sequential order of the volumes (e.g., FortBend-DC-09-29-CLR-Vol001.pdf, FortBend-DC-09-29-CLR-Vol002.pdf, etc.);
  - (h) 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., FortBend-DC-09-29-CLR-1Sealed.pdf, FortBend-DC-09-29-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk’s record;
  - (i) 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., FortBend-DC-09-29-CLR-1Supp-Vol001.pdf, FortBend-DC-09-29-CLR-2Supp-Vol001.pdf);
  - (j) submit each computer file to the Texas Appeals Management and E-filing System (TAMES) web portal using the instructions provided on the appellate court’s website; and
  - (k) not lock any document that is part of the record.

### **1.3. Filing a Paper Clerk’s Record.**

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

- (a) 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.;

- (b) include no more than 500 pages in each volume, or limit the thickness of each volume to a maximum of two inches;
- (c) include only one-sided copies in the clerk's record;
- (d) number the first volume "1" and each succeeding volume sequentially;
- (e) if practicable, make a legible copy of the documents on opaque, white, 8½ x 11 inch paper; and
- (f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

#### **1.4. Non-Conforming Records and Supplements.**

In the event of a material violation of this rule in the preparation or filing 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 2. ELECTRONIC REPORTER'S RECORD.**

- (a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules of Appellate Procedure 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records, and the court's local rules. 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 consolidated record in the case.
- (b) If proceedings were recorded stenographically, the court reporter or recorder must file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System (TAMES) web portal and in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records, the court's local rules, and any guidelines posted on the appellate court's website.
- (c) If the record is filed in electronic format, the court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.
- (d) A court reporter or recorder must not lock any document that is part of the record.
- (e) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

- (f) 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.

**COURT OF CRIMINAL APPEALS OF TEXAS**

**APPLICATION FOR A WRIT OF HABEAS CORPUS  
SEEKING RELIEF FROM FINAL FELONY CONVICTION  
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07**

**INSTRUCTIONS**

- 1. You must use the complete form, which begins on the following page, to file an application for a writ of habeas corpus seeking relief from a final felony conviction under Article 11.07 of the Code of Criminal Procedure. (This form is not for death-penalty cases, probated sentences which have not been revoked, or misdemeanors.)**
- 2. The district clerk of the trial court county in which you were convicted will make this form available to you; on request, without charge.**
- 3. You must file the entire writ application form, including those sections that do not apply to you. If any pages are missing from the form, or if ~~the form has been downloaded and~~ the questions have been renumbered or omitted, your entire application ~~will~~ may be returned ~~dismissed~~ as non-compliant. ~~If your application is returned as non-compliant, the clerk of the trial court will write a note of the defect on your application and return the form to you without filing it.~~**
- 4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.**
- 5. Answer every item that applies to you on the form. ~~You may use additional pages only if you need them for item 17, the facts supporting your ground for relief. Do not attach any additional pages for any other item.~~**
- 6. You must include all grounds for relief on the application form as provided by the instructions under item 17. You must also briefly summarize the facts of your claim on the application form as provided by the instructions under item 17. Each ground shall begin on a new page, and the recitation of the facts supporting the ground shall be no longer than the two pages provided for the claim in the form.**
- 7. ~~Do not cite cases or other law in this application form. Do not make legal arguments in this form.~~ Legal citations and arguments may be made in a separate memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not.**
- 8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form on pages 11 and 12. You may be prosecuted and convicted for aggravated perjury if you make any false statement**

of a material fact in this application.

9. When the application is fully completed, mail the original to the district clerk of the ~~convicting district court~~county of conviction. Keep a copy of the application for your records.
10. You must notify the district clerk of the ~~convicting district court~~county of conviction of any change in address after you have filed your application.

Case No. \_\_\_\_\_  
(The Clerk of the convicting court will fill this line in.)

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS**  
**APPLICATION FOR A WRIT OF HABEAS CORPUS**  
**SEEKING RELIEF FROM FINAL FELONY CONVICTION**  
**UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07**

NAME: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

PLACE OF CONFINEMENT: \_\_\_\_\_

TDCJ-CID NUMBER: \_\_\_\_\_ SID NUMBER: \_\_\_\_\_

(1) This application concerns (check all that apply):

- |                                       |   |
|---------------------------------------|---|
| <input type="checkbox"/> a conviction | <input type="checkbox"/> parole   |
| <input type="checkbox"/> a sentence   | <input type="checkbox"/> mandatory supervision                                      |
| <input type="checkbox"/> time credit  | <input type="checkbox"/> out-of-time appeal or petition for<br>discretionary review |

(2) What district court entered the judgment of the conviction you want relief from?  
(Include the court number and county.)

\_\_\_\_\_

(3) What was the case number in the trial court?

\_\_\_\_\_

(4) What was the name of the trial judge?

\_\_\_\_\_

(5) Were you represented by counsel? If yes, provide the attorney's name:

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(6) What was the date that the judgment was entered?

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(7) For what offense were you convicted and what was the sentence?

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(8) If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?

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(9) What was the plea you entered? (Check one.)

- guilty-open plea                       guilty-plea bargain  
 not guilty                                       *nolo contendere*/no contest

If you entered different pleas to counts in a multi-count indictment, please explain:

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(10) What kind of trial did you have?

- no jury     jury for guilt and punishment

jury for guilt, judge for punishment

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

\_\_\_\_\_

(12) Did you appeal from the judgment of conviction?

yes  no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to? \_\_\_\_\_

(B) What was the case number? \_\_\_\_\_

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name:

\_\_\_\_\_

(D) What was the decision and the date of the decision? \_\_\_\_\_

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

yes  no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? \_\_\_\_\_

(B) What was the decision and the date of the decision? \_\_\_\_\_

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

yes  no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? \_\_\_\_\_

**(B) What was the decision and the date of the decision? \_\_\_\_\_**

**(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.**

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**(15) Do you currently have any petition or appeal pending in any other state or federal court?**

**yes**                       **no**

**If you answered yes, please provide the name of the court and the case number:**

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**(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)**

**yes**                       **no**

**If you answered yes, answer the following questions:**

**(A) What date did you present the claim? \_\_\_\_\_**

**(B) Did you receive a decision and, if yes, what was the date of the decision?**

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**If you answered no, please explain why you have not submitted your claim:**

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(17) **Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.* If you have more than four grounds, use pages 14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.**

**You may attach include with the form a memorandum of law ~~to the form application~~ if you want to present legal authorities, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not ~~stated~~ raised on the form application. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.**





















**WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.**

**VERIFICATION**

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

**OATH BEFORE A NOTARY PUBLIC**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

\_\_\_\_\_  
Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

**PETITIONER'S INFORMATION**

Petitioner's printed name: \_\_\_\_\_

State bar number, if applicable: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**INMATE'S DECLARATION**

I, \_\_\_\_\_, am the applicant / petitioner (circle one) and being presently incarcerated in \_\_\_\_\_, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Applicant / Petitioner (circle one)

**PETITIONER'S INFORMATION**

Petitioner's printed name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Signed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Petitioner

**APPENDIX G**  
**IN THE COURT OF CRIMINAL APPEALS OF TEXAS**  
**ORDER ADOPTING SUMMARY SHEET**  
**FOR POST-CONVICTION APPLICATIONS FOR**  
**WRIT OF HABEAS CORPUS**

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 73, The Court of Criminal Appeals hereby orders that the attached form to be used when a post-conviction application for writ of habeas corpus is transmitted to the Court of Criminal Appeals.

Ex Parte \_\_\_\_\_ **Application for Writ of Habeas Corpus**  
(Name of Applicant) from \_\_\_\_\_ County  
\_\_\_\_\_ Court

TRIAL COURT WRIT NO. \_\_\_\_\_

**CLERK'S SUMMARY SHEET**

APPLICANT'S NAME: \_\_\_\_\_  
(As reflected in judgment)  
OFFENSE: \_\_\_\_\_  
(As reflected in judgment)  
CAUSE NO: \_\_\_\_\_  
(As reflected in judgment)  
PLEA: \_\_\_\_\_ GUILTY \_\_\_\_\_ NOT GUILTY  
SENTENCE: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Terms of years reflected in judgment)  
JUDGE'S NAME: \_\_\_\_\_  
(Judge presiding at trial)  
APPEAL NO: \_\_\_\_\_  
(If applicable)  
CITATION TO OPINION: \_\_\_\_\_ S.W.3d \_\_\_\_\_  
(If applicable)  
HEARING HELD: \_\_\_\_\_ YES \_\_\_\_\_ NO  
(Pertaining to the application for writ of habeas corpus)  
FINDINGS & CONCLUSIONS FILED: \_\_\_\_\_ YES \_\_\_\_\_ NO  
(Pertaining to the application for writ of habeas corpus)  
RECOMMENDATION: \_\_\_\_\_ GRANT \_\_\_\_\_ DENY \_\_\_\_\_ NONE  
(Trial court's recommendation regarding application for writ of habeas corpus)  
JUDGE'S NAME: \_\_\_\_\_  
(Judge presiding over habeas corpus proceeding)  
NAME OF COUNSEL IF APPLICANT IS REPRESENTED: \_\_\_\_\_