

ANDERS GUIDELINES

Section I addresses the requirements for *Anders* briefs submitted in guilty plea cases.

Section II addresses the requirements for *Anders* briefs submitted in a jury or bench trial.

Section III addresses the requirements for notifying your client of his/her right to access the appellate record.

SECTION I

***Anders* Briefs in Guilty Plea Cases**

If you plan to file an *Anders* brief and supporting motion to withdraw in a guilty plea case, please take note of the following information. To assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967), the *Anders* brief in support of a motion to withdraw in a guilty plea case ordinarily must contain a discussion of whether the defendant was properly admonished pursuant to article 26.13 of the Texas Code of Criminal Procedure, and whether arguable error was committed during the punishment phase. As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required. See the briefing checklist for a complete list of requirements. The *Anders* guidelines do not replace but rather supplement these requirements.

Compliant *Anders* briefs

- (1) examine the trial court's compliance with Texas Code of Criminal Procedure article 26.13;
- (2) examine whether appellant was mentally competent when the court accepted his plea;
- (3) examine whether appellant's plea was free and voluntarily made; and
- (4) examine the adequacy of the sentence.

SECTION II

***Anders* Briefs in Jury and Bench Trial Cases**

If you plan to file an *Anders* brief and supporting motion to withdraw in a jury or bench trial case, please take note of the following information. To assure and demonstrate compliance with the holdings of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978), and *Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991), the *Anders* brief in support of a motion to withdraw must contain, at a minimum, a discussion of the items listed below. You are encouraged to include these items in the Table of Contents, which will assist the court in conducting its examination of the record. As with any brief, compliance with Texas Rule of Appellate Procedure 38 is

required. For a complete list of requirements, see the briefing checklist. If there are any issues unique to the case not covered by the items listed below, those should be discussed as well. These guidelines do not replace but rather supplement these briefing requirements.

The items to be included, at a minimum, are:

- (1) Sufficiency of the indictment;
- (2) Any adverse pretrial rulings affecting the course of the trial (e.g., motions to suppress, motions in limine, motions to quash, speedy trial motion);
- (3) any adverse rulings during trial on objections or motions (e.g., objections regarding the admission or exclusion of evidence, objections premised on prosecutorial or judicial misconduct, mistrial motions);
- (4) any adverse rulings on post-trial motions(e.g., motion for a new trial or post-judgment verdict of acquittal);
- (5) jury selection [N/A in bench trial];
- (6) jury instructions [N/A in bench trial];
- (7) sufficiency of the evidence, which would include a recitation of the elements of the offense(s), and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) any errors for which there were no objections but may rise to the level of fundamental error; and
- (9) calculation of the sentence and the reasonableness of the sentence imposed.

Section III

Pro Se Access to the Appellate Record

To comply with Anders, the Court of Criminal Appeals requires you to notify your client of his/her right to access the appellate record and provide him/her with a form motion for pro se access to the appellate record. *Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014).

You must provide the court with a transmittal letter in which you notify your client of his/her right to access the appellate record and provide him/her with a form motion for pro se access to the appellate record. An example of a form motion is below.

Return to:

Fourteenth Court of Appeals
301 Fannin, Room 245
Houston, TX 77002

NO. 14-__-____-CR

_____	§	COURT OF APPEALS
v.	§	14TH DISTRICT
The State of Texas	§	HOUSTON, TEXAS

Pro se Motion for Access to Appellate Record

To the Honorable Justices of Said Court:

On _____ [attorney to fill in date], appellant's appointed counsel filed a brief in the above styled and numbered cause pursuant to *Anders v. California*, 386 U.S. 738 (1967).

_____, appellant, moves this court to provide him/her access to a copy of the appellate record including the clerk's record and the court reporter's record.

Appellant requests an extension of time of 30 days from the date he/she receives the appellate record to file a pro se response to counsel's *Anders* brief.

Respectfully submitted,

Pro se Appellant