

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9090

APPROVAL OF AMENDED LOCAL RULES FOR THE COURT OF APPEALS FOR THE SECOND COURT OF APPEALS DISTRICT

ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 1.2, this Court approves the following amended local rules for the Second Court of Appeals. The procedures prescribed by these local rules apply in lieu of those prescribed by the Texas Rules of Appellate Procedure to the extent there are differences between the procedures; otherwise, the Rules of Appellate Procedure continue to apply with full force and effect.

Dated: April 28, 2014.



Nathan L. Hecht, Chief Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice



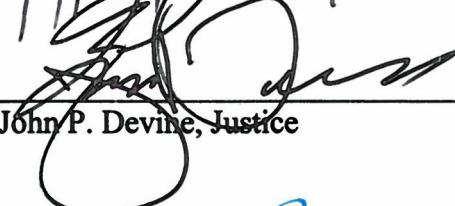
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

RULE 1. BRIEFS

All briefs, in both civil and criminal cases, must conform to Rules 9 and 38 of the Texas Rules of Appellate Procedure. All briefs must also meet the following requirements, unless the court, upon motion, permits an exception to the rules:

A. **Cover.** The front cover of the brief must (1) be addressed to the Court of Appeals for the Second District of Texas and (2) identify the presiding judge and the trial court from which the appeal is taken, for example, "Appeal from the [number] District Court, [name] County, Texas, the Hon. [name] presiding."

B. **Number of Copies.** If a brief is not electronically filed, the original and four copies of every brief and any separately-bound appendix must be filed with the clerk.

C. **Motions for Leave to File Briefs.** The appellant's opening brief, the appellee's opening brief, and the appellant's reply brief may be filed without leave of court, if timely. After the appellant's reply brief has been timely filed, any later brief merely replying to the last brief filed will be filed without a motion, if tendered at least seven days prior to the date of the scheduled oral argument or submission date. All other briefs,

including amended briefs, supplemental briefs, post-submission briefs, and letter briefs must be accompanied by a motion for leave to file, unless the brief is requested by the court.

D. Letter Briefs. Letter briefs must be addressed to the clerk and refer to the style and number of the case. They must be double-spaced, except for the address to the clerk.

E. Filing Dates. The court will set filing dates for appellant's and appellee's opening briefs when the record is filed and notify the parties of the filing dates. Motions to extend the filing dates for briefs will not be granted except upon a reasonable explanation of the need for an extension.

F. Recording or Exhibit. Whenever a party raises an issue in a brief that requires the court to view a video or audio recording or physical exhibit, the party must file in this court a motion to supplement the appellate record with the recording or exhibit when the party files its brief if the party did not designate the exhibit to be included in the reporter's record.

RULE 2. ORIGINAL PROCEEDINGS

Original proceedings are governed by Rule 52 of the Texas Rules of Appellate Procedure and this rule.

A. Number of Copies. If a petition is not electronically filed, the original and four copies of every petition and any separately bound record or appendix must be filed with the clerk.

B. Notice. If the court is of the tentative opinion that relator is entitled to relief or that a serious question concerning the relief requires further consideration, the clerk will send the parties notice stating (1) the date the real party in interest's response must be filed, if one has not been filed, (2) the date the relator's reply to the response must be filed, if permitted by the court, (3) whether the court will allow argument or will submit the case without oral argument, (4) if oral argument is permitted, the date and the time allotted for argument, and (5) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court.

RULE 3. MOTIONS

All motions must comply with Rules 9 and 10 of the Texas Rules of Appellate Procedure and this rule.

A. Number of Copies. If a motion is not electronically filed, the original and one copy of every motion must be filed with the clerk.

B. Signatures and Certificates. In both civil and criminal cases, all motions must contain an original signature, a certificate of service, and, except motions for rehearing, a certificate of conference stating substantially one of the following:

(1) A conference was held on [date] with the opposing party on the

merits of this motion, and the opposing party [does][does not] oppose the motion.

(2) A conference was not held with the opposing party because

[explanation].

C. Motions for Extension of Time in Criminal Cases. In addition to complying with Rule 10 of the Texas Rules of Appellate Procedure, all motions for extension of time in criminal cases must state whether the defendant is incarcerated.

D. Motions for Rehearing and En Banc Reconsideration. A motion for rehearing and a motion for en banc reconsideration must include a copy of the opinion and judgment of the court of appeals.

RULE 4. ORAL ARGUMENT

Oral argument is governed by Rule 39 of the Texas Rules of Appellate Procedure and this rule.

A. Request. Oral argument should not be requested unless the party requesting argument intends to appear on the date set for submission. Conditional requests for argument (e.g., "Appellant requests oral argument only if oral argument is requested by appellee.") are acceptable.

B. Time Allowed. Unless additional time is granted by the presiding justice of the panel to which the case is assigned, oral argument will be limited to fifteen (15)

minutes for the appellant's opening argument, fifteen (15) minutes for the appellee's argument, and five (5) minutes for the appellant's rebuttal. Requests for additional time must be made by motion filed at least ten (10) days prior to the scheduled submission date.

C. Continuance. After a case has been set for argument, oral argument may be continued only by an order of the court for good cause. It may not be continued by agreement of the parties.

D. Waiver. A party who desires to waive an oral argument that has been previously requested or scheduled must notify the clerk and all opposing parties at least seven days prior to the scheduled submission date.

RULE 5. FAX FILING OF DOCUMENTS

A. By the Court. Except as specifically required by the Texas Rules of Appellate Procedure, any notices issued by the clerk of the court or any orders issued by the court may be made by fax, at the discretion of the court. Fax notification will be made to the fax number provided by the attorney of record for each party to the appeal.

B. By the Parties.

(1) Permissible Fax Filings. A party may fax file a document only if the party

is not required to electronically file the document. The clerk will accept for fax filing any

document that is a total of ten transmitted pages or less, excluding the cover sheet.

Documents may be faxed to the court (fax number: 817-884-1932) both during and after

normal working hours, but documents received after 4:45 p.m. will be considered filed the

next day the court is open to the public.

(2) Cover Sheet. A cover sheet must accompany all documents transmitted by

fax and must clearly identify: 1) the name, address, telephone number, fax number, and

email address, if any, of the sender; 2) the name of the party the sender represents; 3)

the document being transmitted; 4) the cause number; 5) the number of pages being

transmitted; 6) and the name of the clerk or deputy clerk, if any, to whose attention the

document is directed.

(3) Receipt of Transmission. The quality of the original must be clear and dark

enough to be transmitted legibly by fax. The clerk will be responsible for events that

disrupt, impair, or render impossible the receipt of documents transmitted by fax. The sender is obligated to ensure that documents transmitted by fax have been received legibly and completely by the clerk. Although the clerk's office will verify by telephone that a document has been received legibly and completely, it will not initiate the telephone call. If a document transmitted by fax is not complete or is otherwise illegible, the clerk will nonetheless file it and bring it to the attention of the court. However, the incompleteness or illegibility of a document may be grounds for striking or denying a motion.

(4) **Service on Parties.** The party transmitting a document by fax must serve a copy of the document on all parties to the appeal by fax or other expedited means.

(5) **Fees.** The sender must deposit any applicable fees in the U.S. mail on the day the fax is transmitted. Failure of the clerk to receive the fees within seven days after the day the fax is filed may result in the striking of the filing transmitted by fax.

(6) **Signature on Original.** The sender must maintain the original of any document transmitted by fax, with the original signature affixed, as required by section 51.806 of the Texas Government Code

RULE 6. WITHDRAWAL OF RECORD ON APPEAL

In addition to the conditions in Rule 12.4 of the Texas Rules of Appellate Procedure, the clerk may permit a paper-filed record or other paper-filed item to be taken from the clerk's office on the following conditions:

A. Civil Cases. In civil cases, attorneys may check out a paper-filed record from the clerk at any time up to three days before the date on which the case is scheduled to be submitted to the court. After that time, attorneys may not check out the court of appeals's record except on the leave of the court. An attorney who checks out the record must return it promptly to the clerk on demand. Pro se parties may inspect a paper-filed record only on the premises of this court. Parties may request one CD copy of an electronically filed record at any time.

B. Criminal Cases. In criminal cases, the court will not allow the record to be checked out. Records must be checked out through the district clerk's office or county clerk's office in the county from which the appeal arose.

RULE 7. PROTECTION OF PARTIES' IDENTITIES IN FILED DOCUMENTS

In parental termination and child protection cases, as defined in Rule 28.4(a) of the Texas Rules of Appellate Procedure, and juvenile court cases, in all documents submitted to the court other than a docketing statement—including all appendix items submitted with a brief, petition, or motion—a party must use an alias, as defined in Rule 9.8(a) of the Texas Rules of Appellate Procedure, to identify not only a minor, but also a minor's parent, family member, foster parent, and any other person necessary to protect a minor's identity and must redact all such documents accordingly. Additionally, in other appeals or original proceedings in which the court determines that a child's or other person's identify should be protected, the Clerk's office may request that the parties use aliases in their documents filed with the court.

ORDER ADOPTING LOCAL RULES

These local rules for the Second District Court of Appeals are adopted
subject to the approval of the Supreme Court of Texas and the Texas Court of
Criminal Appeals.

Terrie Livingston
Chief Justice Terrie Livingston

Lee Ann Dauphinot
Justice Lee Ann Dauphinot

Anne Gardner
Justice Anne Gardner

Sue Walker
Justice Sue Walker

Bob McCoy
Justice Bob McCoy

Bill Meier
Justice Bill Meier

Lee Gabriel
Justice Lee Gabriel