

## **Anders Guidelines**

Section I details *Anders* briefs submitted in cases with a guilty plea.

Section II details *Anders* briefs submitted in a jury or bench trial.

Section III details additional responsibilities of an *Anders* attorney.

Section IV details an *Anders* appellant's right to access the appellate record.

### **SECTION I**

#### ***Anders* Brief in Guilty Plea Cases**

If appointed counsel intends to file an *Anders* brief in a guilty plea case, counsel must comply with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). In addition to complying with Rule 38 of the Texas Rules of Appellate Procedure, an *Anders* brief must address:

- (1) Whether appellant was properly admonished pursuant to article 26.13 of the Texas Code of Criminal Procedure;
- (2) Whether appellant was mentally competent when the court accepted his plea;
- (3) Whether appellant's plea was free and voluntarily made; and
- (4) The adequacy of the sentence and whether arguable error was committed during the punishment phase.

### **SECTION II**

#### ***Anders* Briefs in Jury or Bench Trial Cases**

If appointed counsel intends to file an *Anders* brief and supporting motion to withdraw in a jury or bench trial case, counsel must comply with *Anders*, 386 U.S. 738, 87 S. Ct. 1396, *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). In addition to complying with Rule 38 of the Texas Rules of Appellate Procedure, an *Anders* brief must address, at a minimum:

- (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, and speedy trial motions);
- (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, and mistrial motions);
- (4) Any adverse rulings on post-trial motions (e.g., motion for 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. Include the elements of the offense(s) and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) Any errors that may rise to the level of fundamental error which were not objected to;
- (9) The punishment range of the offense(s) and the reasonableness of the sentence(s) imposed.

### **SECTION III**

#### **Additional Responsibilities of *Anders* Attorney**

The appointed attorney who files an *Anders* brief must file a motion to withdraw in compliance with Rule 6.5 of the Texas Rules of Appellate Procedure and also send a letter to appellant to:

- (1) Notify appellant of the motion to withdraw and the *Anders* brief along with providing a copy of each to appellant;
- (2) Inform appellant of his right to file a *pro se* response and of his right to review the record before filing such response; and

- (3) Inform appellant of his *pro se* right to seek discretionary review if the court of appeals declares the appeal frivolous.

*See Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014).

The appointed attorney must also notify this Court, in writing, that he has:

- (1) Informed appellant of the motion to withdraw and attendant *Anders* brief;
- (2) Provided appellant with the requisite copies while notifying him of his various *pro se* rights; and
- (3) Supplied appellant with a form motion for *pro se* access to the appellate record to be filed within ten days

An example of the form motion to provide to this Court:

NO. 01-\_\_\_\_-\_\_\_\_-CR

_____	§	COURT OF APPEALS
v.	§	1ST DISTRICT
The State of Texas	§	HOUSTON, TEXAS

### **CERTIFICATE OF COUNSEL**

In compliance with the requirements of *Anders v. California*, 386 U.S. 378, 87 S. Ct. 1396 (1967), I, [**Name of attorney**], court-appointed counsel for appellant, [**name of appellant**], in the above-referenced appeal, do hereby verify, in writing, to the Court that I have:

1. Notified appellant that I filed a motion to withdraw as counsel with an accompanying *Anders* brief, and provided a copy of each to appellant;
2. Informed appellant of his right to file a *pro se* response identifying what he believes to be meritorious grounds to be raised in his appeal, should he so desire;

3. Advised appellant of his right to review the appellate record, should he wish to do so, before filing that response;
4. Explained the process for obtaining the appellate record, provided a *Motion for Pro Se Access to the Appellate Record* lacking only appellant's signature and the date, and provided the mailing address for this Court; and
5. Informed appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous.

Respectfully submitted,

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Attorney for Appellant

## SECTION IV

### **Pro Se Access to the Appellate Record**

To comply with *Anders*, appointed counsel must notify appellant of his right to access the appellate record and provide him with a form motion for *pro se* access to the appellate record. *See Kelly*, 436 S.W.3d at 319–20. An example of the form motion to provide appellant:

NO. 01-\_\_-\_\_\_\_-CR

_____	§	COURT OF APPEALS
v.	§	1ST 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