

FOURTH COURT OF APPEALS
INTERNAL OPERATING PROCEDURES
FOR THE HANDLING OF CASES

1. Applicability

These Internal Operating Procedures for the Handling of Cases apply to all civil and criminal proceedings filed in the Fourth Court of Appeals except appeals arising under the Parental Notification Act, which are governed by that Act and sections 2, 4, and 16 of these rules only.

2. Seniority

The chief justice is the senior justice. The seniority of a justice is determined by the date the justice joined the court. If two or more justices join the court on the same date, their seniority relative to one another will be determined by lot.

3. “By Lot”

Whenever these rules provide that assignment shall be “by lot,” the responsibility for making the assignment by lot is entrusted to the clerk of the court. In making an assignment by lot, the clerk of the court may decide the procedure to be employed.

4. “Justice” and “Participating Justices”

When “justice” and “justices” is used in these rules (other than in section 2), it refers both to the court’s chief justice and justices.

A “participating justice” is a justice (including any visiting justice assigned to the case) who is not recused or disqualified from considering whether to grant en banc consideration or reconsideration or participating in en banc review in a particular case.

5. Court Records

a. Public Records

Unless made confidential by law, the court’s opinions, judgments, and orders are public records. The original briefs and other papers filed in a case, clerks’ records, and reporters’ records are public records unless sealed by order of the trial court in accordance with Rule 76a of the Texas Rules of Civil Procedure, by another court in accordance with other law, or by other law.

b. Not Public Records

The rotation lists and assignment sheets maintained by the clerk of the court; drafts of opinions, judgments, and orders; memoranda; individuals' notes; and documents, including electronic records, reflecting circulation of and votes on motions and drafts of opinions, judgments, and orders are confidential and must not be placed in the public record.

c. Sealed Records

If a record is sealed, the clerk of the court must:

- i. ensure the record remains sealed to all unauthorized persons; and
- ii. issue a letter warning the litigants and their attorneys that the record is sealed in this court.

6. Failure to Pay Filing Fee

If a document is tendered for filing without the appropriate filing fee, notice will be sent to the filer. If the filing fee is not paid within ten days after the date notice is sent, the staff attorney assigned to the case will be notified.

7. Alternative Dispute Resolution

Local Rule 2 provides that “[o]n a party’s motion, or on the Court’s own initiative after reviewing the docketing statement, the Court may refer a civil case to alternative dispute resolution.” On the motion of any party, the Court may facilitate referrals of civil cases to alternative dispute resolution.

8. Monitoring Panels

a. Assignment of Monitoring Justice

When an ordinary appeal (which includes a restricted appeal for purposes of these Internal Operating Procedures) or non-parental termination accelerated appeal is filed, it must be assigned to a justice in rotation in order of seniority to monitor.

When “an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship” is filed, *see* TEX. R. JUD. ADMIN. 6.2, *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. F app., (a parental termination appeal), the appeal must be immediately assigned to a panel and authoring justice in accordance with section 9.c. The assigned panel and authoring justice will oversee both the monitoring and submission of the parental termination appeal. Unless stated differently below or required by statute, the monitoring and submission process in a parental termination appeal will be handled as an accelerated appeal.

b. Definitions Used during Monitoring

In ordinary appeals and non-parental termination accelerated appeals, the justice to whom an appeal is assigned for monitoring purposes is the “monitoring justice”; the monitoring justice’s staff attorney is the “monitoring attorney”; the “monitoring panel” is the monitoring justice and the next two justices in order of seniority who are not recused or disqualified; and the “monitoring period” is the period of time beginning with the date the appeal is filed and ending on the date that a submission panel is assigned to the appeal in accordance with section 9. In parental termination appeals, the “monitoring justice” is the authoring justice assigned in accordance with section 9.c; the “monitoring attorney” is that justice’s staff attorney assigned to the case; the “monitoring panel” is the panel assigned in accordance with section 9.c; and the “monitoring period” is the period of time beginning with the date the appeal is filed and ending on the date that the appeal is submitted.

c. Jurisdiction Checks

- i. As soon as practicable after the monitoring attorney’s receipt of the clerk’s record, the monitoring attorney must complete a jurisdiction check.
- ii. When conducting a jurisdiction check, the monitoring attorney must determine whether the record was sealed by the trial court and notify the clerk of the court accordingly, so the letter required by section 5.c.ii may be sent.
- iii. If the monitoring attorney determines that the court does not have jurisdiction over the appeal, so that it must be dismissed, the monitoring attorney must prepare an appropriate opinion, order, and/or judgment.
 - (1) In a criminal case, if a notice of appeal is filed more than one year after it was due, the appeal may be dismissed without first issuing a show cause order; if the notice of appeal was filed less than one year after it was due, the appeal may not be dismissed without first issuing a show cause order and affording the appellant an opportunity to respond.
 - (2) In a civil case, if a notice of appeal is filed no more than fifteen days after the date it was due, the monitoring panel must issue a show cause order and afford the appellant an opportunity to provide a reasonable explanation for the late filing.

d. Certification in Criminal Appeals

If the trial court’s certification states and the record reflects that the appellant does not have the right to appeal, the monitoring justice must issue a show cause order and afford the appellant an opportunity to respond before dismissing the appeal.

Conversely, if the trial court's certification states that the appellant does not have the right to appeal but the record reflects that the appellant does have the right to appeal, the monitoring justice must issue an order affording the trial court an opportunity to amend its certification.

e. Failure to File Appellate Record

- i. If a clerk's record is not filed because the appellant failed to pay or make arrangements to pay the clerk's fee for preparing the record, the monitoring attorney must determine whether the record reflects that the appellant is indigent.
- ii. If the record establishes that the appellant is indigent, the monitoring justice must issue an order stating that appellant is indigent and ordering the clerk to file the clerk's record.
- iii. If the record establishes that the appellant is not indigent or fails to establish indigency, the monitoring justice must issue an order affording appellant at least ten days to show that the clerk's fee has been paid or that appellant is entitled to proceed without payment of costs. If appellant fails to file a satisfactory response within the time ordered, the monitoring panel may dismiss the appeal for want or prosecution.
- iv. If neither the appellate record nor a notification of late record is timely filed in a parental termination appeal, the monitoring justice may issue an order directing the district clerk and/or court reporter to file the record within ten days of the date of the order.

f. Motions

- i. All motions filed during the monitoring period (except motions for extensions of time in which to file briefs, which the clerk is authorized to rule on by the administrative order attached as Appendix 1) must be delivered immediately after filing to the monitoring attorney.
- ii. All motions filed during the monitoring period, except the motions specified in section 8.f.iii, must be either promptly ruled upon by the monitoring justice in accordance with Rule 10.3(a) of the Texas Rules of Appellate Procedure or, if necessary, carried with the case.
- iii. A motion must be submitted to the monitoring panel if:
 - (1) The ruling on the motion will dispose of the appeal;
 - (2) The motion will be disposed of with a written opinion;

- (3) The monitoring justice votes to grant a motion to extend the time in which to file a brief in excess of ninety days from the date the brief was originally due; or
 - (4) The ruling on a motion/petition will grant a permissive appeal even if the motion/petition is an agreed motion/petition.
 - iv. If a motion requiring immediate action must be submitted to the monitoring panel and one of the justices on the monitoring panel is unavailable, the motion must be submitted to the next justice in order of seniority until the required number of signatures has been obtained. This substitution is limited to the motion that requires immediate action and does not otherwise affect the monitoring panel.
 - v. If a ruling on a motion that must be submitted to the monitoring panel will not dispose of the appeal, it may be ruled upon by only two justices in exceptional circumstances.
 - vi. Motions that may be ruled upon by a single justice pursuant to section 8.f.ii must be disposed of by a written order. Motions that require a ruling by a panel pursuant to section 8.f.iii must be disposed of by a written order or an opinion, as a majority of the panel deems appropriate.
 - g. Briefs
 - i. When a party's brief is filed or an amicus brief is received, the fact of its filing or receipt must be entered into the court's case management system and the brief delivered to the monitoring attorney as soon as practicable after filing.
 - ii. After receiving a brief, the monitoring attorney must review it to ensure that it complies with Rule 38 of the Texas Rules of Appellate Procedure.
 - iii. If a brief "flagrantly" violates Rule 38 of the Texas Rules of Appellate Procedure, a written order requiring it to be amended, supplemented, redrawn, or stricken in accordance with Rule 38.9(a) of the Texas Rules of Appellate Procedure may be issued by the monitoring panel.
 - h. Initial Recommendation Regarding Oral Argument
 - i. When the response brief in an ordinary appeal has been filed or the time for filing a response brief has expired, the monitoring attorney must review the briefs to determine whether oral argument has been properly requested by any party and, if so, whether to recommend that the appeal be submitted with oral argument or on briefs in accordance with the criteria set forth in section 11.a.iii.

- ii. After the review described in the preceding subsection, the monitoring attorney must forward the briefs and recommendation to the clerk of the court, who must calendar the case for submission in accordance with the monitoring attorney’s recommendation at the earliest practicable date in accordance with the procedures set forth in section 9.
 - iii. In non-parental termination appeals, if a party fails to request oral argument on the cover of its brief but later files a motion requesting oral argument, the motion must be held in abeyance until the appeal has been assigned to a submission panel. When the case is assigned to a submission panel, the panel must rule on the motion as soon as practicable and communicate its ruling to the clerk of the court, who must set the case for submission in accordance with the panel’s vote at the earliest practicable date.
- i. Disposition of Ordinary Appeals and Non-Parental Termination Accelerated Appeals during the Monitoring Period
- i. If the monitoring panel determines that an ordinary appeal or non-parental termination accelerated appeal should be dismissed or otherwise determined before the appeal is assigned a submission panel in accordance with section 9, the monitoring panel shall be the panel that dismisses or otherwise determines the appeal, and the monitoring justice shall be the authoring justice.

9. Submission Panels

- a. Ordinary Appeals
 - i. Submission panels for ordinary appeals are assigned at the beginning of each calendar year using a court-approved time series matrix.
- b. Non-Parental Termination Accelerated Appeals
 - i. Except as otherwise provided in section 10.c, when a response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the case must be assigned to a submission panel, with the authoring justice being the next justice in rotation in order of seniority and the remaining panel members selected by the clerk of the court in accordance with the appropriate assignment sheet.
 - ii. The clerk of the court shall be responsible for maintaining the rotation list and the assignment sheet for non-parental termination accelerated appeals.
- c. Parental Termination Appeals
 - i. A parental termination appeal must be assigned to a single panel for both monitoring and submission. Upon receipt of a notice of appeal in a parental

termination appeal, the case must be assigned to a panel, with the authoring justice being the next justice in rotation in order of seniority and the remaining panel members selected by the clerk of the court in accordance with the appropriate assignment sheet.

- ii. If, before a panel has been assigned in a parental termination appeal, a request for emergency relief is pending and the justice who should be assigned to author the opinion is not available, the next justice in the rotation list will serve as the authoring justice; in that event, authorship in the next parental termination appeal filed after the previously unavailable justice becomes available must be assigned to the justice who was unavailable.
- iii. The clerk of the court shall be responsible for maintaining the rotation list and the assignment sheet for parental termination appeals.

d. Original Proceedings

- i. Except as otherwise provided in section 10.c, upon receipt of a petition in an original proceeding, the case must be assigned to a submission panel, with the authoring justice being the next justice in rotation in order of seniority and the remaining panel members selected by the clerk of the court in accordance with the appropriate assignment sheet.
- ii. If, before a panel has been assigned in an original proceeding, a request for emergency relief is pending and the justice who should be assigned to author the opinion is not available, the next justice in the rotation list will serve as the authoring justice; in that event, authorship in the next original proceeding filed after the previously unavailable justice becomes available must be assigned to the justice who was unavailable.
- iii. The clerk of the court shall be responsible for maintaining the rotation list and the assignment sheet for original proceedings.
- iv. A motion filed in an original proceeding must be delivered immediately after filing to the staff attorney assigned to assist the authoring justice with the original proceeding.
- v. A motion requesting a first extension of time to file a response or reply brief in an original proceeding may be granted with the approval of the authoring justice only.
- vi. All motions, other than motions requesting a first extension of time to file a response or reply brief, in an original proceeding must be ruled upon or voted to be taken under advisement by the panel members within five days of submission of the motion to the panel. If a ruling on a motion will not dispose of an original proceeding, and if the motion has been submitted to the panel for more than five days and has not been ruled upon or voted to

be taken under advisement by all panel members, the motion may be ruled upon or ordered to be taken under advisement by only two panel members.

- vii. In addition to the preceding subsection, if a ruling on a motion will not dispose of an original proceeding, it may be ruled upon by only two panel members in exceptional circumstances.
- viii. If a motion requires immediate action and the required number of votes has not been obtained because one or more panel members is unavailable, the motion must be submitted to the next justice not on the panel in order of seniority until the required number of votes has been obtained. This substitution is limited to the motion that requires immediate action and does not otherwise affect the panel assigned to the original proceeding.
- ix. A proposed order requesting a response in an original proceeding must be approved or disapproved by the panel members within five days of circulation of the proposed order to the panel by the authoring justice or the staff attorney assigned to assist the authoring justice with the original proceeding. An order requesting a response in an original proceeding may issue with the approval of only two panel members if the order requesting a response has been pending with the panel for more than five days and one of the panel members has not approved or disapproved the order.
- x. A motion filed in an original proceeding must be disposed of by a written order or an opinion, as a majority of the panel deems appropriate.

e. Panels for Oral Argument Outside Bexar County

A panel for oral argument outside Bexar County must be constituted in the same manner as set forth above in section 9.a.i.

f. Visiting Justice Panels

- i. With the approval of a majority of the court, the chief justice may ask the chief justice of the Texas Supreme Court to appoint a visiting justice to assist in the handling of the court's docket.
- ii. If a visiting justice is assigned, the unassigned justice and another justice selected by lot shall sit on a panel with the visiting justice.
- iii. The clerk must attempt to equalize the number of visiting justice panels to which justices are assigned.

g. Periods of Service

- i. Panels serve for two-month periods, which are: September-October, November-December, January-February, March-April, and May-June. In

addition, the court may, by majority vote, decide to submit cases in July and August, although any justice may opt out of July and August submission panels. Panels for July and August shall be constituted from those justices who have not opted out as set forth above in section 9.a.i.

- ii. Panels for oral argument outside Bexar County serve only the day or days designated for oral argument in that county.

- h. Acceleration of Appeal

If a monitoring panel orders that an ordinary appeal be accelerated, either on motion or on the court's own initiative, the monitoring panel shall be the panel that decides the merits of the appeal, and the authoring justice must be determined by lot.

- i. Presiding Officer

The senior justice on a panel presides over the panel.

- j. Substitution of Panel Members

Upon the reasonable request, disqualification, or absence of a submission panel member, the unassigned justice for the month in which a case is to be submitted shall sit for the absent panel member. If the unassigned justice cannot sit, another justice selected by lot shall sit in place of the absent panel member. If the absent panel member was assigned to author the opinion, the sitting justice will be responsible for writing that opinion unless the panel by majority vote agrees otherwise. All changes in the composition of panels and authorship of opinions must be immediately reported to the clerk of the court and entered into the court's case management system.

- k. Newly Appointed or Elected Justice

- i. On cases set for submission on briefs and those already submitted on briefs, a newly appointed or elected justice replaces the justice whose place the newly appointed or elected justice has assumed.
- ii. On cases set for submission with oral argument, a newly appointed or elected justice replaces the justice whose place the newly appointed or elected justice has assumed only if (a) oral argument has not yet been heard or (b) oral argument has been heard but the other two justices assigned to the case cannot agree on a judgment.
- iii. On remand of a case by a higher court for further proceedings, whether the case was originally submitted with oral argument or on briefs, the newly appointed or elected justice replaces the justice whose place the newly appointed or elected justice has assumed.

- l. Equalization of Panel Service

The clerk of the court must attempt to equalize the number of ordinary appeal, non-parental termination accelerated appeal, parental termination appeal, and original proceeding panels to which the justices are assigned.

10. Assignment of Cases to Submission Panels

a. Ordinary Appeals

i. Submission Docket

Not later than forty-five days before the submission date for a given month, the clerk of the court must prepare a draft submission docket to include all ordinary appeals ready for submission. To the extent possible, the clerk of the court will equalize the number of oral argument cases and the number of on briefs cases each submission panel will draw.

ii. Docket Draw

To the extent possible, the clerk of the court will cause the oral argument cases, whether civil or criminal, to be drawn evenly among the justices on the submission panels. Thereafter, to the extent possible, the clerk of the court will cause the civil on briefs cases, followed separately by the criminal on briefs cases, to be drawn evenly among the justices on the submission panels.

b. Accelerated Appeals and Original Proceedings

Non-parental termination accelerated appeals, parental termination appeals, and original proceedings shall be assigned to submission panels in accordance with section 9.

c. Related Matters

In an effort to promote greater efficiency and judicial economy, any panel assigned to a matter, *i.e.*, an ordinary appeal, accelerated appeal, or original proceeding, shall have the discretion to determine that another matter pending in the court is sufficiently related to the assigned matter such that the same panel should be assigned to the related matter. When a panel determines that two matters are sufficiently related, the senior justice of the panel shall instruct the clerk to assign the same panel to the related matter, and the same justice shall author both matters. If a different panel has been assigned to the related matter before the matters are determined to be related, the clerk of the court shall remove the panel assigned to the related matter. If the related matter is an original proceeding or an accelerated appeal, and the justice assigned to author the related matters is not the justice who was originally assigned to be the authoring justice pursuant to section 9, authorship of the next original proceeding or accelerated appeal ready for submission must be

assigned to the authoring justice who was removed as the authoring justice of the related matter.

11. Assignment of Cases to Authoring Justices, Final Decision on Oral Argument, and Notice of Submission

a. General Provisions

- i. Assignment of authorship to a particular justice must be kept confidential until the court's opinion is issued.
- ii. The clerk of the court must make an effort to ensure that each justice is assigned to author an equal number of opinions in ordinary appeals, non-parental termination accelerated appeals, parental termination accelerated appeals, and original proceedings.
- iii. A case may be submitted without oral argument if the panel, after examining the briefs, decides oral argument is unnecessary for any of the reasons set forth in Rule 39.1 of the Texas Rules of Appellate Procedure.
- iv. For ordinary appeals, after a submission panel and authoring justice has been assigned, a motion requesting an extension of time to file a reply brief may be granted with the approval of the authoring justice only. For non-parental termination accelerated appeals, after a submission panel and authoring justice has been assigned, a motion requesting a first extension of time to file a reply brief may be granted with the approval of the authoring justice only. For parental termination appeals, after submission, a motion requesting a first extension of time to file a reply brief may be granted with the approval of the authoring justice only.

b. Ordinary Appeals

- i. Except as otherwise provided in section 9.j and section 10.c, after preparation of the draft submission docket for ordinary appeals, but before submission, authorship of opinions shall be assigned to a particular justice randomly by lot.
- ii. Within ten days after authorship has been assigned in ordinary appeals on the draft submission docket, each panel must meet to review the briefs and determine whether to accept the monitoring attorney's recommendation regarding oral argument.
 - (1) If the panel agrees with the monitoring attorney's recommendation, no action is required.
 - (2) If the panel disagrees with the monitoring attorney's recommendation, the presiding justice must inform the deputy clerk

responsible for preparing the docket of all changes to the draft submission docket.

- (3) After both panels have reported any changes, the clerk of the court must notify the parties of the date of submission, the members of the panel, and whether the case will be submitted with oral argument or on briefs.

c. Accelerated Appeals

- i. Except as otherwise provided in section 10.c, authorship of opinions in accelerated appeals shall be assigned in accordance with section 9.
- ii. When the response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the authoring justice will recommend to the panel whether the appeal should be submitted with oral argument or on briefs.
- iii. Upon receipt of the recommendation identified in the preceding subsection, each justice on the panel must vote whether to submit the appeal with oral argument or on briefs.
- iv. After the panel has voted on whether to submit the accelerated appeal with oral argument or on briefs, the authoring justice's staff attorney must forward the panel's vote to the appropriate deputy clerk, who must calendar the case for submission in accordance with the panel's vote at the earliest practicable date.
- v. In parental termination appeals where both sides waived oral argument, the case may be submitted on briefs with the approval of the authoring justice only.

d. Original Proceedings

- i. Except as otherwise provided in section 10.c, authorship of opinions in original proceedings shall be assigned in accordance with section 9.
- ii. If, at any point before submission, a justice on an original proceedings panel recommends to the panel that the appeal should be submitted with oral argument, each justice on the panel must vote whether to submit the appeal with oral argument or on briefs.
- iii. If the panel holds a vote in accordance with the preceding subsection, the staff attorney assigned to assist the authoring justice with the original proceeding must forward the panel's vote to the appropriate deputy clerk, who must calendar the case for submission in accordance with the panel's vote at the earliest practicable date.

- iv. If the panel does not vote on submission with oral argument or on briefs, the original proceeding will be submitted on briefs.

12. Pre- and Post- Submission Conferences

a. Pre-Submission Conference

Each panel shall hold a pre-submission conference for cases submitted with oral argument. The presiding justice for the panel is responsible for identifying an appropriate meeting date.

b. Post-Submission Conference

If a case is orally argued, it must be discussed at a post-submission conference held as soon as practicable after oral argument.

c. Three-Month Post-Submission Conference

Each panel shall schedule a three-month post-submission conference, to be scheduled at the ten-day meeting described by section 11.b.

13. Preparation, Circulation, and Issuance of Opinions

a. Preparation and Circulation of Opinion

Unless the panel members agree otherwise, the justice assigned to author an opinion must prepare and electronically circulate a draft majority opinion to the other members of the panel.

- i. In ordinary appeals, the authoring justice should place a draft majority opinion into circulation within three months of the submission date. If the authoring justice fails to do so, the other two panel members may call for a conference and, by a majority vote of the panel, transfer authorship to either of the other two panel members.
- ii. In accelerated appeals, the authoring justice should place a draft majority opinion into circulation as soon as practicable. If the authoring justice of an accelerated appeal fails to place a draft majority opinion into circulation within three months of the submission date, the other two panel members may call for a conference and, by a majority vote of the panel, transfer authorship to either of the other two panel members.
- iii. In original proceedings, the authoring justice should place a draft majority opinion into circulation as soon as practicable. If the authoring justice of an original proceeding fails to place a draft majority opinion into circulation within three months of the date the original proceeding commenced or

within three months of the date the last timely-filed responsive brief was filed, whichever is later, the other two panel members may call for a conference and, by a majority vote of the panel, transfer authorship to either of the other two panel members.

b. Publication Designation

Although a publication designation is required in opinions in criminal appeals, opinions in civil appeals must not contain a publication designation.

c. Ten-Day Review Period

Within ten days of receipt of a draft opinion (“the ten-day review period”), the other members of the panel must electronically vote.

- i. Within the ten-day review period, a panel member may prepare a concurring or dissenting opinion and circulate it electronically to the authoring justice and the other member of the panel. After the authoring justice has electronically voted (by indicating that he or she has made changes to the draft majority opinion or read the concurring or dissenting opinion), the remaining member of the panel must electronically vote on the draft majority opinion and the draft concurring or dissenting opinion.
- ii. If a justice does not vote on the draft opinion within the ten-day review period, the authoring justice must promptly call a panel conference to discuss any concerns held by the justice who has not yet voted.
- iii. If neither of the panel members concurs in the judgment proposed by the authoring justice or if a panel member desires major revisions to a draft opinion, the panel members must promptly notify the authoring justice, who must call a panel conference. At this conference, the panel members must attempt to resolve their differences. If the attempt fails, a vote must be taken. If the authoring justice is in the minority, the remaining panel members must decide which of them will author the new majority opinion.

d. Issuance after Thirty Days

If a dissenting, concurring, or undecided justice has not voted on a draft majority opinion for more than thirty days from the date the draft majority opinion was placed into circulation, the authoring justice may call a conference to discuss issuance of the opinion without the dissenting, concurring, or undecided justice. After the conference and in accordance with section 13.f, the authoring and joining or concurring justice may issue the opinion with an appropriate notation, such as “Dissent to Follow.”

e. Twenty-Four Hour Review Period

After the panel members have finalized their opinion(s), the assigned legal assistant must e-mail the panel members' opinion(s) to the other justices. If all justices indicate by e-mail that they do not object to immediate issuance of the opinion(s), the opinion(s) may issue in accordance with section 13.f; otherwise, no opinion may issue until the expiration of twenty-four hours after the date and time of the e-mail (excluding Saturdays, Sundays, and legal holidays). The chief justice has the discretion to exempt an opinion from the 24-hour review or to shorten the 24-hour review period. At any time within the 24-hour period, any justice may forward his or her suggestions, concerns, or questions to the panel members. Receipt of a suggestion, concern, or question does not obligate the panel members to modify their opinion(s).

f. Issuance of Opinions

Opinions must be issued and posted on the court's website on Wednesdays and such other days as a panel (or the justices participating in en banc consideration or reconsideration) by majority vote may direct. Opinions also may be issued and posted on the court's website on the last working day of the month, with the approval of the authoring justice only, if needed but not as a matter of course.

14. Motions for Rehearing

a. Motions for Extension of Time to File a Motion for Rehearing

The author of the opinion issued may grant a motion requesting an extension of time to file a motion for rehearing without panel approval.

b. Time for Rehearing

A motion for rehearing not accompanied by a motion for en banc reconsideration must be considered and decided promptly by the panel assigned to the case. A motion for rehearing accompanied by a motion for en banc reconsideration is governed by section 15.b.

c. Requesting Response

If a majority of the panel believes a motion for rehearing may be meritorious, it must request a response before granting the motion in compliance with Rule 49.2 of the Texas Rules of Appellate Procedure.

d. Order after Response

When a response is requested to a motion for rehearing and when the motion for rehearing is ruled upon, the assigned attorney must prepare and circulate an appropriate order; and the clerk must mail a copy of the order to the parties in compliance with Rule 12.6 of the Texas Rules of Appellate Procedure.

15. En Banc Consideration or Reconsideration

a. Motions for Extension of Time to File a Motion for En Banc Consideration or Reconsideration

The author of the opinion issued may grant a motion requesting an extension of time to file a motion for en banc consideration or reconsideration without approval of the en banc court.

b. Priority

Motions for en banc consideration or reconsideration should be given priority over other matters in circulation.

c. Preliminary Review on Motion

i. If a motion for rehearing is accompanied by a separate motion for en banc reconsideration, the motion for rehearing, the motion for en banc reconsideration and a copy of the panel's original opinion (if not included as an appendix to one of the motions), and a copy of the panel's proposed revised opinion, if any, must be electronically circulated first to the panel's authoring justice, then to the original panel members, and then to the remainder of the participating justices.

(1) Each panel member must electronically vote to grant or deny the motion for rehearing and to approve or reject the panel's proposed revised opinion, if any.

(2) Each participating justice must vote to grant, deny, or request a response to the motion for en banc reconsideration. If a majority of the justices vote to deny the motion for en banc reconsideration because a revised panel opinion will be issued, the order, which should issue on the same date as the revised opinion, must state: "Because the panel has issued a different opinion, the motion for en banc reconsideration is DENIED AS MOOT. *See* TEX. R. APP. P. 49.5."

ii. If a motion for en banc reconsideration is not accompanied by a motion for rehearing, the motion for en banc reconsideration and a copy of the panel's opinion (if not included as an appendix to one of the motions) must be electronically circulated first to the panel's authoring justice and then to the original panel members. After the panel has voted, the motion must then be electronically circulated to the remainder of the participating justices. Each participating justice must vote to grant, deny, or request a response to the motion for en banc reconsideration.

- iii. If a participating justice votes to grant a motion for en banc reconsideration, he or she must prepare and circulate a memorandum indicating the basis for his or her vote; the memorandum may simply refer to the issue upon which en banc reconsideration should be granted and the appropriate pages in the motion for en banc reconsideration.
 - iv. If three justices vote to request a response to a motion for en banc reconsideration, the motion for en banc reconsideration and response must be re-circulated for another vote after the response is filed.
 - v. After each participating justice has voted to either grant or deny a motion for en banc consideration or reconsideration, an order reflecting the court's vote must be sent to the parties or to their attorneys.
- d. Preliminary Review on the Court's Own Initiative
- i. Any justice may request en banc consideration or reconsideration in any case at any time within the court's plenary power by requesting a meeting to discuss whether the court should consider or reconsider the case en banc or by preparing and circulating a memorandum explaining the reason or reasons that en banc consideration is "necessary to secure or maintain uniformity of the court's decisions" or "extraordinary circumstances require en banc consideration." TEX. R. APP. P. 41.2(c).
 - ii. If on the court's own initiative a majority of the participating justices grant en banc consideration or reconsideration, an order reflecting the court's vote must be sent to the parties or their attorneys. If a majority of the participating justices vote to deny en banc consideration or reconsideration on the court's own initiative, no order is required.
- e. En Banc Opinion
- i. After all participating justices have voted, the authoring justice of the panel opinion must notify all participating justices of the outcome of the vote. If a motion for reconsideration has been denied, participating justices have 72 hours to notify the authoring justice if they intend to file a written dissent to the denial.
 - ii. If a motion for en banc reconsideration is granted, the authoring justice on the panel must call a meeting of all justices within ten days.
 - iii. Each participating justice must determine whether he or she approves or disapproves the panel's majority opinion.
 - iv. If a majority of the participating justices disapprove of the panel's majority opinion, they must decide among themselves which of them will author an en banc opinion.

- v. The justice selected to author the en banc opinion must cause to be prepared and electronically circulated to the participating justices an en banc opinion.
- vi. Any participating justice may concur in or dissent to an en banc opinion or judgment, with or without an opinion.
- vii. To ensure an adequate time for filing recusal motions, no en banc opinion may issue until twenty-one days after the date of the order granting en banc consideration or reconsideration.

f. **Concurring or Dissenting Opinion**

Any participating justice may concur in or dissent to the grant or denial of a motion for en banc reconsideration or the grant or denial of a justice’s request for en banc consideration or reconsideration on the court’s own initiative, with or without an opinion. If a participating justice authors a concurring or dissenting opinion, the order granting or denying en banc consideration or reconsideration and the concurring or dissenting opinion should issue simultaneously. Upon request, a participating justice’s concurrence or dissent shall be noted on the order granting en banc consideration or reconsideration.

16. Parental Notification Act Appeals

a. **Assignment of Docket Number**

Immediately upon receipt of a notice of appeal, the appeal must be assigned a docket number and re-styled In re Jane Doe #__, as in In re Jane Doe #10.

b. **Assignment of Panel and Authorship**

After the appeal has been assigned a docket number and re-styled, the clerk of the court must immediately assign a panel to the appeal, with an authoring justice assigned in rotation in order of seniority and the remaining two members of the panel assigned in accordance with the clerk’s “In re Jane Doe Assignment Sheet.”

c. **Notification to Deputy Clerk**

After the panel and authorship have been assigned, the clerk of the court must immediately notify the deputy clerk assigned to the appeal of the identity of the authoring justice and the remaining two panel members.

d. **Preparation of Opinion and Judgment**

Upon receipt of the identity of the authoring justice and the remaining two panel members, the deputy clerk assigned to the appeal must immediately deliver the appeal file to the authoring justice’s staff attorney, who must, as soon as practicable,

perform the review and research dictated by the circumstances; distribute copies of the filed documents and any memoranda to the panel members; and, on the forms adopted by the court, prepare and cause to be issued an opinion and judgment reflecting the panel's vote.

e. **Deadline for Issuance of Opinion**

Unless an extension is granted in accordance with section 33.04(b) of the Texas Family Code, the court's opinion and judgment must issue "not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application." TEX. FAM. CODE ANN. § 33.04(b).

f. **Confidentiality of Ruling**

"A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor." TEX. FAM. CODE ANN. § 33.004(c).

g. **Sealing Case**

Immediately after the court's opinion and judgment issue, the case file must be placed in an envelope, labeled with the style and appeal number of the case, and placed in the Court's safe.

17. Merger

These Internal Operating Procedures for the Handling of Cases supplant all previous versions of the court's internal operating procedures and rules relating to the handling of cases. Accordingly, upon adoption of these Internal Operating Procedures for the Handling of Cases, supplanted procedures and rules shall be of no further force or effect.

18. Amendment

To amend these rules, the court must convene en banc.

When convened en banc, a majority of the court's members constitutes a quorum; and the concurrence of a majority of the court sitting en banc is necessary for amendment.

These rules are adopted this 7th day of March, 2023.


Rebeca C. Martinez, Chief Justice

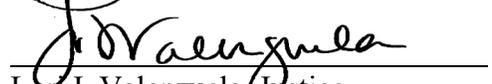

Patricia O. Alvarez, Justice


Irene Rios, Justice


Liza A. Rodriguez, Justice


Luz Elena D. Chapa, Justice


Beth Watkins, Justice


Lori I. Valenzuela, Justice

**IN THE COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT
STATE OF TEXAS**

In the Matter of:

**Delegation of Authority
of the Clerk of the Court of Appeals,
Fourth Court of Appeals District,
State of Texas**

§
§
§
§
§
§

ADMINISTRATIVE ORDER

1. **SCOPE**—This order governs notices of late record and extensions of time to file records and briefs in ordinary, restricted, and accelerated appeals, except for “an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.” *See* TEX. R. JUD. ADMIN. 6.2, *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. F app., (a parental termination appeal).
2. **DUE DATE**—For purposes of this order, the “due date” for records and briefs is the date on which the record or brief was initially due under Texas Rule of Appellate Procedure 35.1 (civil records), 35.2 (criminal records), or 38.6 (briefs).
3. **NOTICE OF LATE RECORD**
 - A. If a record is not received by the due date in a civil case, the Clerk must send to the responsible official a “notice of late record.” *See* TEX. R. APP. P. 37.3(a)(1). If a record is not received by the due date in a criminal case or a parental termination appeal, the Clerk must refer the matter to the court. *See* TEX. R. APP. P. 37.3(a)(2).
 - B. The Clerk must send the notice required by Texas Rule of Appellate Procedure 37.3(a)(1) no later than five days after the date the record was due in a non-parental termination appeal.
 - C. The notice required by Texas Rule of Appellate Procedure 37.3(a)(1) must advise the responsible official of the date the record was due and ask the official to file either (i) a Notification of Late Record, explaining the delay within ten days of the date of the notice or (ii) the record within thirty days of the date of the notice in an ordinary or restricted appeal and within ten days of the date of the notice in an accelerated appeal. *See* TEX. R. APP. P. 37.3(a)(1).
4. **EXTENSIONS OF TIME**
 - A. **Records**—The Clerk is authorized to attest to per curiam orders granting extensions of time to file a record until thirty days after its due date in ordinary and restricted appeals and until ten days after its due date in non-parental termination accelerated appeals. If

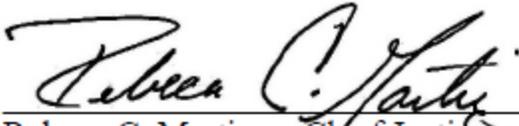
the motion requests an extension of time for a period in excess of thirty days in ordinary and restricted appeals and in excess of ten days in non-parental termination accelerated appeals, the Clerk is authorized to attest to a per curiam order granting the extension of time, in part, for thirty days after the record's due date in ordinary and restricted appeals and for ten days after the record's due date in non-parental termination accelerated appeals. The Clerk may not otherwise attest to per curiam orders extending the time to file a record and must refer all further extension requests to the monitoring staff attorney and justice.

B. Briefs—The Clerk is authorized to attest to per curiam orders granting extensions of time to file a brief according to the following procedures:

- a.** First motions for extension of time that are not actively opposed: The Clerk is authorized to attest to per curiam orders granting a first motion for extension of time until thirty days after the brief's due date in ordinary and restricted appeals; if the motion requests an extension of time for a period in excess of thirty days, the Clerk is authorized to attest to a per curiam order granting the extension of time, in part, for thirty days after the brief's due date. In non-parental termination accelerated appeals, the Clerk is authorized to attest to per curiam orders granting a first motion for extension of time until twenty days after the brief's due date; if the motion requests an extension of time for a period in excess of twenty days, the Clerk is authorized to attest to a per curiam order granting the extension of time, in part, for twenty days after the brief's due date. All opposed motions are sent to the monitoring staff attorney.
- b.** Second motions for extension of time that are not actively opposed: The Clerk is authorized to attest to per curiam orders granting a second motion for extension of time until sixty days after the brief's due date in ordinary and restricted appeals, with the approval of the monitoring staff attorney. In non-parental termination accelerated appeals, the Clerk is authorized to attest to per curiam orders granting a second motion for extension of time until forty days after the brief's due date, with the approval of the monitoring staff attorney. All per curiam orders granting a second motion for extension of time will include the language, "Further requests for extension of time will be disfavored." All opposed motions are sent to the monitoring staff attorney.

5. EFFECTIVE DATE—This order is effective February 14, 2023. The order replaces that certain administrative order styled "In the Matter of: Delegation of Authority of the Clerk of the Court of Appeals, Fourth Court of Appeals District, State of Texas," dated November 1, 2022, to be effective November 1, 2022.

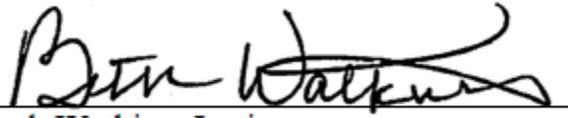
DATED this 14th day of February, 2023.


Rebeca C. Martinez, Chief Justice

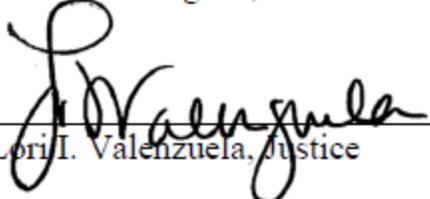

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