

ANDERS GUIDELINES — PARENTAL TERMINATION CASES

Section I addresses the guidelines for *Anders* briefs submitted in parental termination cases.

Section II addresses the filing of motions to withdraw in such cases.

Section III addresses the ***Educational Burdens*** when filing an *Anders* brief, including the requirement of notifying your client of his/her right to access the appellate record.

SECTION I

***Anders* Briefs in Parental Termination Cases**

The *Anders* procedure is applicable to an appeal from the termination of parental rights when an appointed attorney concludes that there are no nonfrivolous issues to assert on appeal. *In re E.L.Y.*, 69 S.W.3d 838, 841 (Tex. App.—Waco 2002, order) (per curiam). If you plan to file an *Anders* brief in a parental termination case, please take note of the following information.

Texas Rule of Judicial Administration 6.2 states that an appeal of a suit for termination of the parent-child relationship should be disposed of within 180 days from the date the notice of appeal is filed; therefore, **time is of the essence in these cases**.

As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required.

An alias must be used in place of the name of a minor and can either be the initials of the person or a fictitious name.

To assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967), the *Anders* brief ordinarily should contain a discussion of the following:

- (1) the trial court's jurisdiction pursuant to Texas Family Code section 263.401(a);
- (2) any adverse pretrial rulings affecting the course of the trial;
- (3) any adverse rulings during trial on objections or motions;
- (4) any adverse rulings on post-trial motions;
- (5) jury selection, if applicable;

- (6) jury instructions, if applicable;
- (7) sufficiency of the evidence to support the trial court’s findings under Texas Family Code section 161.001(b)(1) (“predicate grounds”);
- (8) sufficiency of the evidence to support the trial court’s finding under Texas Family Code section 161.001(b)(1)(D) or (E) (“endangerment”), even when the evidence is sufficient to support another predicate ground, because of the potential consequences for parental rights to a different child, *see In re N.G.*, 577 S.W.3d 230, 235 (Tex. 2019);
- (9) sufficiency of the evidence to support the trial court’s findings under Texas Family Code section 161.001(b)(2) (“best interest”);
- (10) any errors for which there were no objections but may rise to the level of fundamental error; and
- (11) any errors in the order of termination.

See the ***Anders Checklist*** for a more complete list of the recommended items of discussion. If there are any issues unique to the case not covered by the items listed, those should be discussed as well. You are encouraged to include these items in the Table of Contents, which will assist the Court in conducting its examination of the record.

SECTION II

Motion to Withdraw

The Supreme Court of Texas has concluded that the right to counsel under Texas Family Code section 107.013(a)(1) through the exhaustion of appeals under Texas Family Code section 107.016(2)(B) encompasses all proceedings in the Supreme Court of Texas, including the filing of a petition for review. *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam). Once appointed by the trial court, counsel should be permitted to withdraw ***only for good cause*** and on appropriate terms and conditions. Counsel’s belief that his/her client has no grounds to seek further review from the court of appeals’ decision does not constitute good cause. Therefore, a motion to withdraw brought in this Court on that basis, in the absence of additional grounds for withdrawal, may be premature. Accordingly, **the filing of a motion to withdraw with your *Anders* brief is generally improper.**

SECTION III

Educational Burdens and *Pro Se* Access to the Appellate Record

If you file an *Anders* brief, you must fulfill the following Educational Burdens:

- (1) notify your client of the *Anders* brief and provide him/her with a copy of it;
- (2) inform your client of his/her right to file a *pro se* response;
- (3) inform your client of his/her right to review the record in preparation for filing his/her *pro se* response;
- (4) provide your client with a copy of the record (***strongly encouraged***) or with a form motion for *pro se* access to the appellate record (and the mailing address for the court of appeals); and
- (5) inform your client of his/her right to ask you to file a petition for review on his/her behalf with the Supreme Court of Texas should this Court declare the appeal to be frivolous.

See Kelly v. State, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *Stanley v. State*, 523 S.W.3d 122, 124–25 (Tex. App.—Waco 2015, order) (per curiam); *In re E.L.Y.*, 69 S.W.3d 838, 840 (Tex. App.—Waco 2002, order) (per curiam).

To show compliance with these Educational Burdens, you must provide this Court with either a copy of the transmittal letter sent to your client or a separate Certificate of Counsel. The transmittal letter, if provided, should not include any communication the disclosure of which would violate the attorney/client privilege. A Certificate of Counsel is preferred.

Examples of a form motion for pro se access to the appellate record, transmittal letters, and a Certificate of Counsel are included with these Guidelines.

Once you have filed the *Anders* brief and have met the above Educational Burdens, your client will have 20 days within which to file a *pro se* brief or other response or a motion for an extension of time in which to file a brief or other response.