

Survey of the Texas Appellate Courts - First District Court of Appeals (Houston)

The Basics

1. Court's Address: Court of Appeals, 1st District, 1307 San Jacinto, 10th Floor, Houston, TX, 77002
2. Telephone number: 713-655-2700; 713-752-2304(fax)
3. Website address: www.1stcoa.courts.state.tx.us
4. Names of Justices: Sherry Radack (C.J.), Tim Taft, Sam Nuchia, Terry Jennings, Evelyn Keyes, Elsa Alcalá, George C. Hanks, Jr., Laura Carter Higley, and Jane Bland
5. Chief Staff Attorney: Janet Williams
6. Clerk of Court: M. Karinne McCullough
7. Local Rules: The court has one local rule to govern transfers between the First and Fourteenth Court of Appeals.

The Ins and Outs

PROCEDURE	WHAT AND HOW TO FILE	HOW HANDLED	COURT'S PARTICULAR PRACTICES	SPECIAL NOTES
Motions	Original plus 2 copies in appellate proceedings; original plus 3 copies in original proceedings.	The court is generally liberal in granting motions for extension, provided the briefs will be filed within 30 days of the original due date. Requests for extensions beyond 30 days after the original due date are disfavored, and the need for such extensions will be considered on a case-by-case basis.	Motions requiring only a single judge generally are decided by a single judge. A panel is used to act on petitions for extraordinary writs, dismissing or otherwise determining an appeal, and motions for rehearing.	Motions are considered and decided daily. The process is the same for both contested and agreed motions, except contested motions are held for 10 days.
Briefs	An original plus 5 copies of briefs and appendices. Deadlines follow the TRAPs.			Covers cannot be red, black, or dark blue. A motion for leave must accompany any late brief.

<p>Case Assignment</p>		<p>When a case is filed, the clerk assigns it to a justice on a rotating basis. The assigned justice becomes the author of the opinion in that case. The Chief Justice sets the panels for the court. Generally, the three most senior justices serve as the presiding judges of the three panels. The panels generally change on a quarterly basis.</p>	<p>Once the case is set for submission, it is assigned to either a staff attorney or a briefing attorney, depending on the size of the case and the complexity of the issues. The attorney prepares a presubmission memo, which is usually completed one week before argument. Briefs and supplemental authorities filed within one week of submission might not be addressed in the presubmission memo. Parties receive notice of the panel members at least 21 days before the case is submitted. The panel members are subject to change by the court.</p>	<p>If one of the justices who is not on the panel does not agree with the opinion when the case is submitted for full court review, he or she may call for an en banc review. If the court votes to grant an en banc review, an en banc opinion will issue. If the court votes to deny an en banc review, the justice who called the en banc review may issue a dissent from the denial of an en banc review. In deciding whether to hear a case en banc, the court considers whether an en banc review is necessary to secure or maintain uniformity of the court's decisions or whether extraordinary circumstances require an en banc review.</p>
-------------------------------	--	--	---	--

<p>Oral Argument</p>	<p>Oral argument must be requested on the cover of a party's first brief.</p>	<p>Court typically allows 15 minutes per side; which includes appellant's rebuttal. Rebuttal must be reserved from the appellant's 15 minutes. Court rarely allows more time. Cases with numerous parties or issues may be permitted extra time, in the court's discretion.</p>	<p>The court does not automatically grant requests for argument. The court will consider whether argument would significantly aid the court in determining the legal and factual issues presented in the appeal. Cases with novel or complex issues are more likely to be granted oral argument.</p>	<p>A party that fails to request oral argument waives the right to argue. The court may, in its discretion, permit a party to argue even if it has waived argument.</p>
<p>Voting</p>			<p>Either the day of argument, or the day before, the panel holds a presubmission conference and discusses cases. After argument, the panel holds a postsubmission conference to discuss the submitted cases and take a preliminary vote. The attorney then incorporates the panel's recommended changes into a proposed opinion. The panel judges vote on the case when the authoring judge circulates a proposed opinion. Same method is used for determining cases that are argued and cases submitted without argument.</p> <p>Court generally issues its opinions on Thursdays.</p>	
<p>Opinions</p>		<p>The court has internal guidelines for the time in which opinions should issue. There is no firm deadline for the initial draft, but the court tries to have a draft opinion prepared at the time of submission. After the author circulates a proposed opinion, panel members have approximately one week to either agree, make comments, or announce their intention to concur or dissent. Panel members may informally request more time to review</p>		

<p>Motions for Rehearing</p>	<p>Rules require an original plus 2 copies, but it would be helpful to file an original plus 4 copies. If moving for rehearing en banc, it is helpful but not required to file an original plus 10 copies.</p>	<p>an opinion. If a panel member decides to concur or dissent from the opinion, he or she is given an additional 45 days to draft a concurrence or dissent. When the panel has agreed on a proposed opinion, the case is circulated to the other 6 members of the court for their review, along with concurrences and dissents. Once the full court has had the opportunity to review and approve the proposed opinion, it issues. All members of the court are given 72 hours to review a final opinion before it issues.</p> <p>Motions for rehearing are initially circulated to author; author makes recommendation; then it is circulated to other panel members. If a motion for reconsideration en banc raises an issue that has not previously been presented to the panel in a motion for rehearing, the motion for en banc reconsideration will be presented to the panel. If the panel does not alter its original opinion, then the motion for rehearing en banc is presented to the full court. See <i>Butler v. State</i>, 6 S.W.3d 636, 637 n.1 (Tex. App. —</p>		
				<p>The court has sometimes granted rehearing w/o request under TRAP 50. There are cases where the court has decided to sit en banc without being asked to do so by the parties.</p>

		Houston [1st Dist.] 1999, pet. ref'd). A motion for en banc reconsideration that raises issues previously raised before the panel will be presented directly to the entire court.		
Original Proceedings	Original plus 3 copies.	Original proceedings are assigned to the chambers of the authoring judge, who is assigned at the time the original proceeding is filed. The authoring judge handles the original proceeding, along with the other two members of the panel on which the author is sitting.	Requests for emergency relief are handled promptly, and original proceedings are generally handled on an expedited basis, depending on the circumstances. One vote is required to grant emergency relief.	Whether the court grants argument in an original proceeding depends on whether it would significantly aid the court in determining the legal and factual issues presented.

Technology

1. Court has both Westlaw and Lexis.
2. With respect to United States Supreme Court cites, use U.S. and S.Ct.
3. The court has received briefs or records on CD-Rom's and finds them helpful.
4. The court prefers that parties provide copies of out of state cases.
5. The court does not accept fax filing.
6. The court does not accept electronic filings.
7. The court distributes orders electronically.
8. The court does not record oral argument.

Appellate Mediation

1. The court provides a means for the parties and their counsel to engage in meaningful settlement negotiations at an early point in the appellate process. However, it is not the practice of the court to order mandatory mediation.
2. Mediation is voluntary. If a party believes that mediation would be beneficial, he should so indicate on the docketing statement. If the court determines after review of the case that mediation is appropriate, it will enter an order referring the case to mediation. The parties will be given 10 days in which to file an objection to mediation. If no party objects to mediation, the parties will choose a mediator, agree on a reasonable fee for the mediator's services, and notify the Clerk of the name of the mediator. After a referral to mediation, the parties are generally given 15 days to choose a mediator and 45 days to conduct the mediation. The parties shall, within 2 days of the conclusion of the mediation, notify the court about whether the parties reached a settlement agreement.

3. If someone needs to contact the court about mediation, they must go through the clerk.
4. The parties must agree on a mediator or the case will not be referred to mediation.

Fees

1. Appeal: \$125, but only one \$125 filing fee for each civil case on appeal regardless of how many appellants there may be or the number of notices of appeal that are filed.
2. Original Proceeding: \$75 for each writ requested.
3. Motions: \$10
4. Response to Motion: None

Miscellaneous

1. The first floor lobby of the court contains a "drop box" for filing after the court has closed. The late night filing box is only open from 5:00 p.m. to 6:00 p.m. Documents filed during that time are considered timely filed on that day.
2. The court rarely uses visiting judges at this time. In the past, the court has regularly used Judges Jackson B. Smith, Jr., Judge Lee Duggan, Jr., and Judge Frank Price. As provided by the Legislature during the last session, it also occasionally uses district court judges as visiting judges.
3. The Supreme Court has approved a new local rule to govern the transfer of cases between the First and Fourteenth Court of Appeals.