

Survey of the Texas Appellate Courts – **San Antonio 4<sup>th</sup>**

**THE BASICS**

1. **Court’s Address:** 300 Dolorosa, Suite 3200, San Antonio, Texas 78205
2. **Telephone number:** Phone: (210) 335-2635, Fax: (210) 335-2762
3. **Website address:** <http://www.4thcoa.courts.state.tx.us>
4. **Names of Justices:** Alma L. López (C.J.), Catherine Stone, Sarah B. Duncan, Karen Angelini, Sandee Bryan Marion, Phylis J. Speedlin, and Rebecca Simmons.
5. **Chief Staff Attorney:** None; Wendy Martinez is the court’s coordinating staff attorney.
6. **Chief Clerk:** Keith E. Hottle
7. **Local Rules:** The court has adopted both local rules and internal operating procedures.

**THE INS AND OUTS**

<b>PROCEDURE</b>	<b>WHAT AND HOW TO FILE</b>	<b>HOW HANDLED</b>	<b>COURT’S PARTICULAR PRACTICES</b>	<b>SPECIAL NOTES</b>
<b>Motions</b>	Original plus 1 copy.	When appeal is filed, it is assigned to a judge who is responsible for considering motions filed before the case is set for submission. A single judge may grant a non-dispositive motion filed before submission; however, at least two judges must approve the denial of a motion filed before submission. Two judges must rule on dispositive motions filed before submission and motions filed after a panel has been assigned to the case.	Each judge has a set motions panel based on order of seniority. Motions are considered and decided as they are filed or, when necessary, carried with the case. The process for considering a motion is left to the individual judge’s discretion. The clerk has the authority to grant a first motion for extension of time to file a brief for up to thirty days from the original due date except in accelerated and precedential appeals. A judge’s process for considering additional extensions is left to that judge’s discretion; however, an extension in excess of ninety days from the original due date must be approved by a motions panel.	Local Rule 6 <i>et seq.</i> governs motions. Local Rule 6.2 provides that a motion for rehearing en banc must be filed separately from a motion for rehearing.
<b>Briefs</b>	Original plus 5 copies; same applies to appendices and to letters of additional citations filed under Local Rule 8.3.	Whether to enforce the appendix requirement for briefs in civil appeals is left to the monitoring judge’s discretion.	Court has no requirements or preferences concerning the color of the covers of briefs.	Briefs are governed by Rule 38.6 and Local Rule 8.

<b>Case Assignment</b>		<p>An “at issue” list containing all appeals in which an appellee’s brief has been filed or for which the time for filing an appellee’s brief has expired is prepared by the clerk’s office. Cases on the “at issue” list are then assigned to panels by alternating assignments between the two panels based on the date a case is determined to be at issue.</p>	<p>Judges are assigned to panels by random selection. Panels are randomly drawn every two months with one judge off rotation. Meetings regarding the cases are left to the panel members’ discretion; however, the judges routinely meet after oral argument to discuss the argued cases.</p>	<p>The court refers to Rule 41.2(c) to determine whether to allow en banc consideration. The court uses the Office of Court Administration’s case management software, which does not track the percentage of cases that are heard en banc.</p>
<b>Oral Argument</b>	<p>Oral argument must be requested on the cover of a party’s brief or it is considered waived; however, the court will consider a late request for oral argument. If one party requests oral argument and the other party waives it, the court may direct the party waiving oral argument to appear and argue. TEX. R. APP. P. 39.7.</p>	<p>Oral argument is not automatically allowed. The decision to allow oral argument is at the panel’s discretion. If oral argument is scheduled, a party deciding to waive argument must notify the court and the other parties in writing before submission date. People presenting argument must register in the clerk’s office 30 minutes before the time scheduled for argument and must also orally announce their appearance in the courtroom at the time scheduled for argument. If an attorney or party fails to comply with this rule, the court will deem oral argument waived and may take other action.</p>	<p>Appellant and appellee are allowed 20 minutes for argument; the appellant is allowed 10 minutes for rebuttal. The court may allot more time for oral argument if requested by motion, particularly if there are numerous parties or cross-appeals. Law clerks and staff attorneys participate in conferences and prepare memos for conferences. Parties are notified of the assigned panel after the submission docket is finalized for most appeals or after a submission date is set for accelerated appeals and original proceedings.</p>	<p>Local Rule 9 <i>et seq.</i> governs oral argument.</p>
<b>Voting</b>		<p>Voting on a case submitted by oral argument typically occurs in a conference following oral argument unless additional research is requested by the panel.</p>	<p>Voting on cases submitted without oral argument can either occur as a draft opinion circulates or during a conference.</p>	

<b>Opinions</b>		<p>The court has an internal policy of circulating draft opinions three months after submission. The court also has also an internal operating procedure permitting two judges to issue a majority opinion if the third judge holds the authoring judge's draft opinion for more than 30 days. Opinions are released on Wednesdays and on such days as the authoring justice or the panel may direct.</p>	<p>Once a submission docket is set, judges are assigned to author opinions by random draw. Authorship can change if the judges disagree on the appropriate reasoning or judgment.</p>	<p>Under the court's internal operating procedures, proposed and final opinions are circulated only to panel members. However, the final opinions are forwarded to the non-panel justices who have seventy-two hours to review the opinions and make comments or suggestions.</p>
<b>Motions for Rehearing</b>	<p>Motion to panel: original plus 1 copy; En banc: original plus 1 copy</p>	<p>A motion for rehearing en banc is initially circulated to the author, then to the remainder of the panel, then to rest of the court.</p>	<p>There are cases in which the court has decided to sit en banc on a case without being requested to do so by the parties.</p>	
<b>Original Proceedings</b>	<p>Petition: original plus 3 copies; Record: original only</p>	<p>Panel members are randomly assigned to original proceedings with an effort made to have each judge serve as a member on an equal number of original proceedings.</p>	<p>When to review an original proceeding is left to the authorizing judge's discretion. Two of the three panel members must agree to grant emergency relief. Whether an original proceeding is set for oral argument is determined by the assigned panel.</p>	

**TECHNOLOGY**

1. Court uses Westlaw.
2. Court prefers citations to U.S. and S.Ct. reporters.
3. The court has received briefs or records on CD-Rom and has found them extremely helpful.
4. The court prefers that parties provide copies of out of state cases.
5. Local Rule 3.3 governs filing by fax.
6. The court is exploring the possibility of electronic filing.
7. The court posts its opinions on its website, which has a court mail function.
8. The court records oral argument, and parties may purchase an audio copy of the proceeding if desired.

#### **APPELLATE MEDIATION**

1. The court has a program for appellate mediation, currently under the direction of Justice Catherine Stone.
2. In all civil appeals, the parties are required to file an Addendum to the Docketing Statement; and each civil appeal is screened for possible inclusion in the program based on the addendum.
3. If an appeal is targeted for the program, the parties are notified by letter.
4. The court will permit parties to select their own mediators and will appoint a mediator if the parties cannot agree.
5. Questions may be directed to the Clerk of the Court (Keith E. Hottle).

#### **FEES**

1. Appeal: \$125
2. Original Proceeding: \$75
3. Motions: \$10
4. Response to Motion: \$10 (but \$0 if the court requests a response).

#### **MISCELLANEOUS**

1. Other than the mailbox rule and rule 9.2(a), TEX. R. APP. P., the only method for a party to file a brief after hours is, for briefs ten pages or less, to file by fax.
2. The court does not regularly use visiting judges.
3. The court's local rules are available on the court's website.
4. Since September 1, 2003, approximately 84% of the court's opinions have been memorandum opinions.