

# What's New at the Texas Supreme Court's Clerk's Office

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## I. Introduction

The purpose of this paper is to update you on the inside information you need to keep your relationship with the Texas Supreme Court Clerk's Office running smoothly. Many of these ideas come from hallway consultation with the Justices, their staff attorneys and law clerks, as well as with the staff of the clerk's office. These observations and suggestions are offered in the hope of making things easier for everyone and saving time and money for you, your clients, the Court, and the taxpayers.

Of course, the big news is that we now have a full Court. Also, the Court's schedule is somewhat different this term. Approximately every three weeks, the Court meets in conference for one or two days and hears oral argument for three days.

## II. Filings With the Court

### A. General Suggestions

\* Please make the case number **bold** and **48** font.

\* In your initial filing with the Court (even if that is just a motion for extension of time), please provide the identity of parties and counsel in a matrix or chart (not in a text paragraph), identifying each party and its attorneys, along with the attorneys' current address, phone, fax, and bar card number. It is essential that this information is clear and clearly presented. The information on your first filing will be used by the clerk's office to create the docket sheet and by the Justices to determine recusal. This information is put on the Court's website each night and is also sent to West and other publishers.

\* Clarify what kind of relief you want by the title and prayer of your pleading. Be as specific as you can and use commas to clarify—e.g., "Response to Motion to Supplement and Motion for Leave to Reply and, in the Alternative, Motion to Exceed Page Limits" is different from "Response to Motion to Supplement, Motion for Leave to Reply and, alternatively, Motion to Exceed Page Limits." Don't bury a motion in a brief.

\* Don't put sealed documents in an otherwise unsealed filing. You would be surprised at the number of people who simply include a sealed document as part of an unsealed appendix.

- \* When the Court requests a response or briefs, please let the Court know if you decide to stand on previous filings. Also, be aware that you can join in or adopt by reference other filings in an appellate Court filed by another party in the same case. TEX. R. APP. P. 9.7.
- \* Any filing requested by the Court will be due at 3:00 p.m. on the due date, not 5:00 p.m.
- \* If you are going to use illustrative exhibits at oral argument, you must file eleven 8.5" by 11" copies with the clerk's office, and pay a \$25 filing fee, no later than the morning of argument.
- \* Provide an explanation of the abbreviations that you use refer to the appendix and the record.
- \* Requests for certificates or letters of good standing, or for new licenses, should be addressed: ATTN Andrea

## **B. Motions**

- \* If you need an extension of time but have not been able to confer with opposing counsel, and your current deadline to file will expire before your opponent's ten-day deadline to respond, be sure to include that information in the motion. That way the clerk's office will attempt to call opposing counsel to inquire about a response, and be able to rule on the motion expeditiously.
- \* A motion for extension of time (MET) to file a petition for review is never denied without the Court's approval.
- \* Matters presented for filing without the proper fee will be filed but not forwarded to the Court until the fee (or an affidavit of indigency) is received. When this happens, the clerk's office informs the parties in writing, and will call if time permits, that you have ten days to pay the fee or the filing is subject to being dismissed on Court approval. If you file an MET without the required fee, and do not promptly pay (or submit an affidavit of indigency), please inform the clerk and opposing parties if because of the delay in payment you need a more generous extension of time than first requested.
- \* The Court will generally grant first and second motions for extensions of time to file a petition for review for up to thirty days per motion. In cases involving termination of parental rights, the extension granted will typically be half of that granted in other cases.
- \* If the Court requests a response to a petition, the requesting Justices will be consulted on whether to grant any extension of time for the response.
- \* The clerk of the Court now processes most other motions, not just motions for extensions of time, in cases that have not been assigned to a particular Justice's chambers for memo or opinion. As with having the clerk process motions for extension of time, this is to minimize disparate treatment. In cases assigned to a Justice's chambers, the chambers will dispose of motions other than motions for

extension of time.

- \* Make sure to put “unopposed” or “agreed” on the front of the motion if it is unopposed.
- \* Motions not related to causes (granted cases) are usually disposed of by letter.
- \* Let the Court know as soon as possible about conflicts or contingencies that may affect an oral argument date.
- \* Motions for rehearing are forwarded to the Court immediately after they are filed.

### **C. Petitions for Review and Briefs**

- \* If you file a brief that is not provided for by the TRAPs, e.g., a sur-reply brief, you should decide whether to file a motion for leave to file that brief. The Court can strike the brief on its own or opposing counsel can move to strike.
- \* Make sure the style on your petition is correct. The Court goes by the style on the petition, even if it is different from the style at the Court of appeals.
- \* Please make sure you include a complete copy of the Court of appeals’ opinion in your appendix. There has been a recurring problem with people including only every other page. The clerk’s office now checks to make sure that the appendix includes the trial Court judgement, the Court of appeals’ judgment, and a complete copy of the Court of appeals’ opinion.
- \* Generally, the appendix should be bound along with the petition. If reasonable, put a document at issue in the appendix.
- \* The clerk reviews all petitions to determine if they involve termination of parental rights.
- \* The clerk’s office checks petitions for margins, font size, forbidden cover colors, post mark, number of pages, and number of copies provided. Failure to comply with any of the rules on these items subjects the petition to being struck.
- \* If you file a response waiver before a petition is struck, you should file a second waiver (if you do not wish to respond to the redrawn petition) after the redrawn petition is filed. That will accelerate forwarding the petition to the Court for review.
- \* If a petition is not redrawn, the Court will likely not take any further action. The safest way to move forward may be to allow the time for a motion for extension of time plus ten days for the mailbox rule to expire, and then move the Court of appeals to issue mandate.
- \* The petition should lie flat when opened.

- \* Good advocacy is appreciated; misrepresenting the record is not.
- \* Careful writing is also appreciated; hyperbole is not.
- \* When referring to parties by their names, make sure you first identify their roles in the case as, for example, plaintiff/appellee/petitioner.
- \* Some of the Justices prefer that you list your issues presented in the table of contents so they can see them up front.

### **C. Mandamus and Habeas Corpus**

- \* Call the clerk's office in advance of filing a mandamus with a motion for temporary relief that is needed within 48-72 hours. When the clerk's office is aware of the deadline for relief, the Court and staff prepare appropriately.
- \* E-mail the Court an electronic copy of your petition and motion when there is a short time fuse. This can be very helpful to Justices who are away from the office. Call the clerk's office for the appropriate e-mail address. But remember that e-mailing is not the equivalent of filing.
- \* Attach a meaningful record. Provide all documents that are pertinent to the issues and that may be helpful to the Court.
- \* Consider carefully what documents should be submitted as part of the record. It is not necessary, or wise, to provide every document in the client's file.
- \* Attach relevant documents in an appendix to the petition, separate from the record. And we do not need eleven copies of the record.
- \* Submit all documents and volumes of the record in order. Make sure that the correct documents are behind the **correct tabs**.
- \* Inform the Court in your transmittal letter if you believe that a Justice should be recused. For example, let us know if one of the Justices was on the Court of appeals panel that ruled on the mandamus.
- \* Inform the Court when you are waiting on a Court of appeals ruling but have a petition ready to file in this Court. If there is a short time fuse, consider faxing or e-mailing the Court an advance copy of what you intend to file in this Court so the mandamus attorney can begin reviewing the case. Or file in the supreme Court with a short explanation in the motion and petition.
- \* Include a copy of the petition filed in the Court of appeals in the record. This is a good way to provide the supreme Court with extra information without exceeding page limits.

- \* DON'T serve other parties and counsel by mail when requesting temporary relief. *See* TEX. R. APP. P. 52.10. The Court may request a response before those parties have even been served.
- \* DON'T send your petition by mail if you are requesting immediate relief. You risk losing credibility on your claim for expedited relief.
- \* DON'T wait until the very last minute to file your petition and motion for temporary relief. Provide the Court as much time as possible to review the motion and petition and to get the required number of votes.
- \* DON'T file a motion to exceed page limits when you are requesting immediate relief and have had time to pare down your petition. Begin paring down your petition while it is pending in the Court of appeals (if you can reasonably afford to do so).
- \* The Court uses the language “set for argument” in a mandamus, rather than “granted” as in a petition for review to make clear that the relator’s requested relief is not actually being granted.
- \* When filing a petition for writ of habeas corpus, include the sheriff’s direct phone number so the sheriff can be contacted immediately if the Court decides to release the relator on bond.
- \* Provide proof that the relator is being restrained when filing a petition for writ of habeas corpus.

### **III. What’s New on the Court’s Website**

- \* Casemail is back up and running!
- \* All oral arguments are now digitally recorded and are available on the website, usually by the end of the day a case was argued. You can save the argument directly to your computer, or the clerk’s office will burn a CD for you for \$1.00. You can search for arguments by cause number, or the year the case was argued or filed. Find out more under the “Case Information” tab on the left side of the home page. The oral argument schedule is also available under this tab.
- \* Calendar Explorer – Also located under the “Case Information” tab, this lets you look at what filings are due on a particular date. You click on a date on a monthly calendar to view the information.
- \* Submission of Electronic Briefing – The Court now requests that all briefs on the merits, including amicus and post-submission briefs, be submitted electronically. The Court also requests that when briefs on the merits are submitted, the parties also submit electronic copies of any previously filed petition for review, response, or reply, as applicable. These materials are then made available on the website. Further information is located under the “Case Information” tab.
- \* Case Events – Located on the right-hand side of the home page. Click on this link to view a one-

week snapshot of case events and dispositions: petitions and motions filed, responses and briefs requested, petitions granted or denied, mandamuses filed, and much more, all grouped by event and available for viewing in Adobe, Word, or Excel format.

\* Court History – Finally, for you Court buffs hoping to match former Chief Justice Phillips in being able to list the name and term of each and every former member of the Court going back to 1836, along with the names and terms of each Court clerk (there have only been nine), that information is now available under the “About” tab. Vote totals are not yet included in the database.

#### **IV. Westlaw**

\* Westlaw now has eight databases covering briefs and petitions filed in the Texas Supreme Court, the Texas Court of Criminal Appeals, and the Texas Courts of Appeals. (Federal court briefs are in their own separate databases.) These databases vary quite a bit in scope and coverage date, so be sure to check the database summary for details.