

# **A GUIDE TO PRACTICE BEFORE THE SUPREME COURT OF TEXAS**

**BY**

**THE STATE BAR OF TEXAS APPELLATE SECTION**

**PRO BONO COMMITTEE**

**OCTOBER 2007**

**EXHIBIT F**

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## **I. INTRODUCTION**

This guide from the State Bar of Texas Appellate Section's Pro Bono Committee ("Committee") is designed to provide a simplified guide to the Texas Rules of Appellate Procedure that apply in civil appeals to the Supreme Court of Texas ("Supreme Court" or "Court"). We have prepared this guide to help laypersons and attorneys with little or no appellate experience. But it is not intended to replace the Texas Rules of Appellate Procedure and should not be cited as legal authority. Litigants are required to comply with the rules and the case law. Litigants should consult the Supreme Court's website, which includes links to information about filing requirements and fees, and also answers to frequently-asked questions, at <http://www.supreme.courts.state.tx.us>.

This guide reflects the rules and case law as they exist in **October 2007**. The rules and case law are always subject to change and should be consulted for changes. This guide is available in an alternative format, upon request.

## **II. DOCUMENTS IN THE SUPREME COURT**

All documents submitted to the Supreme Court must be filed with:

**In Person:**

Clerk, Supreme Court of Texas  
201 West 14th Street, Room 104  
Austin, Texas 78701.

**By Mail:**

Clerk, Supreme Court of Texas  
P.O. Box 12248  
Austin, Texas 78711-2248.

The Court requires the filing of an original and eleven copies of all documents. TEX. R. APP. P. 9.3(b). In addition, a copy of all documents filed with the Court must be served (mailed or hand-delivered) on all other parties to the appeal. TEX. R. APP. P. 9.5. All papers filed with the Court must be 8 ½ x 11 inches. TEX. R. APP. P. 9.4(b). The typeface or font size for the document

must be at least 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or at least 13 point or larger proportionally spaced typeface. TEX. R. APP. P. 9.4(e). Rule 9 contains other filing requirements as well.

### **III. WHAT IS A SUPREME COURT APPEAL?**

A Supreme Court appeal begins with a petition for review asking the Court to review the judgment of the court of appeals to determine whether an important error occurred and, if so, whether the petitioner<sup>1</sup> is entitled to relief. An appeal is not a new trial. You cannot present new evidence, call witnesses, or conduct discovery in an appeal. The Supreme Court decides an appeal strictly on the basis of the record from the court of appeals. The record is a compilation of papers that were filed in the trial and appellate courts in your case. It will include the written transcription of any pretrial and trial proceedings that are necessary to determine the appeal (“Reporter’s Record”), documents such as the pleadings, motions, briefs, and any decisions, orders or judgments filed in the trial court (“Clerk’s Record”), and any materials filed with the court of appeals. Generally, a complaint about error in the trial court must have been raised in the court of appeals before the Supreme Court will review it. TEX. R. APP. P. 53.2(f).

### **IV. WHEN CAN THE SUPREME COURT HEAR AN APPEAL?**

#### **A. Discretionary Review of Final Judgments from the Courts of Appeals**

The Supreme Court has the authority to review most final judgments from the courts of appeals. Parties that did not win in the court of appeals may petition the Supreme Court to review the court of appeals’ decision. The Supreme Court exercises discretionary jurisdiction over these appeals, which means that it does not have to decide all the appeals filed but can decide whether or not it wants to hear a case. TEX. GOV’T CODE § 22.001(a). The Court agrees

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<sup>1</sup> A “petitioner” is the party who files a petition for review. TEX. R. APP. P. 3.1(e). A “respondent” is the party adverse to the petitioner. TEX. R. APP. P. 3.1(h)(1).

to hear only about ten percent of the cases that are filed. The primary consideration is whether the legal issues involved in the case have state-wide importance, which means that deciding the issue will affect not just the parties in the case but will affect other situations and other cases. *See* TEX. GOV'T CODE § 22.001(a)(6). The appellate rules list the factors the Court considers in deciding whether to grant discretionary review: (1) whether one of the court of appeals' justices has filed a dissenting opinion—one that disagrees with the majority on an important point of law; (2) whether the court of appeals' decision conflicts with a decision of another court of appeals on an important point of law; (3) whether the case involves the construction or validity of a statute; (4) whether the case involves constitutional issues; (5) whether the court of appeals has made a mistake of law that is of such state-wide importance that it should be corrected; and (6) whether the court of appeals has decided an important question of state law that should be, but has not been, decided by the Supreme Court. TEX. R. APP. P. 56.1(a).

**B. Special Case: Discretionary Review of Interlocutory Appeals**

Supreme Court review ordinarily requires a final judgment from a court of appeals reviewing a final judgment of the trial court. Texas courts of appeals may sometimes be authorized by statute to review some trial court rulings that are “interlocutory,” meaning that they are interim orders in the case and not a final decision on the merits.<sup>2</sup> The Texas Supreme Court can sometimes but not always review a court of appeals' decision in an interlocutory appeal. It can review these appeals if a court of appeals' justice has filed a dissenting opinion disagreeing with the majority on a material question of law or if the court of appeals' decision conflicts on a material question of law with a decision from another court of appeals or the Texas

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<sup>2</sup> *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 51.014(a).

Supreme Court.<sup>3</sup> It can also review interlocutory appeals involving class action certification orders, the denial of summary judgment based on the First Amendment filed by a member of the media, and the failure to dismiss an asbestosis or silica exposure claim for failure to file an expert report.<sup>4</sup> The Supreme Court has discretion whether to hear these cases, and looks to the factors listed in the previous paragraph explaining discretionary review of final judgments of the courts of appeals.

### **C. Special Case: Direct Appeals From the Trial Court**

In very rare cases, a case can be appealed to the Texas Supreme Court directly from the trial court. The most common type of direct appeal is taken when the trial court grants or denies injunctive relief based on the constitutionality of a state statute.<sup>5</sup> Because direct appeals are unusual, they are not addressed in this paper. It is important to understand that these appeals have very different procedures and very different time limits. The procedure for these appeals is set out in TEX. R. APP. P. 57.

## **V. TIME LIMITS FOR SUPREME COURT APPEAL**

A party asking the Supreme Court to review a court of appeals' decision must file a petition for review in the Supreme Court within certain time limits or the court cannot hear the case. If no party has filed a motion for rehearing in the court of appeals, the deadline for seeking Supreme Court review is no later than 45 days from the date of the court of appeals' judgment. TEX. R. APP. P. 53.7(a)(1). If a party has filed a motion for rehearing in the court of appeals, the deadline for seeking Supreme Court review is 45 days from the date the court of appeals denies rehearing. TEX. R. APP. P. 53.7(a)(2).

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<sup>3</sup> TEX. GOV'T CODE § 22.225(c).

<sup>4</sup> See TEX. GOV'T CODE § 22.225(d); TEX. CIV. PRAC. & REM. CODE § 51.014(a)(3), (6), (11).

<sup>5</sup> TEX. GOV'T CODE § 22.001(c).

Sometimes, both sides want to appeal from different alleged errors in the same court of appeals' judgment. If your opponent seeks review in the Supreme Court by filing a petition for review, you may file a "cross-petition" to assert any errors you feel the court of appeals made as to your side of the case. Any cross-petition must be filed within the 45-day deadlines just discussed or, if another party has filed a petition for review, 30 days after that petition was filed. TEX. R. APP. P. 53.7(c).

The time to file a petition for review or a cross-petition can be extended by the Supreme Court by filing a motion within 15 days of the deadline. TEX. R. APP. P. 53.7(f). A motion for extension of time to file a petition for review is filed with the Supreme Court and must state: (1) the court of appeals' docket number and the name of the case in the court of appeals; (2) the date of the court of appeals' judgment; (3) the date the petition for review is due; (4) the amount of extra time requested to file the petition for review; (5) facts showing why the extra time is reasonably needed; (6) a certificate showing whether the other parties object to the request for extra time; and (7) a certificate showing that a copy of the request was sent to the other parties. TEX. R. APP. P. 10.5(b)(1), (3); TEX. R. APP. P. 10.1(a). An example of a motion to extend time for filing a petition is attached as Form 1. There is a filing fee of \$10.00. We recommend that you do everything you can to file your appeal within the deadlines set forth in the Rules because extensions to file a late appeal are not automatically granted.

## **VI. HOW TO START A SUPREME COURT APPEAL**

To start a Supreme Court appeal, you must file a petition for review with the Clerk of the Court and pay the filing fee of \$125.00. If you are proceeding under an affidavit of indigence, you need not pay the filing fee.

You do not file the record with the Court; if it wants the record, it will ask the clerk of the court of appeals to forward it. You may not file new evidence with the Court.

## VII. PETITION FOR REVIEW, RESPONSE, AND REPLY

### A. The Petition for Review

The Petition for Review is a written document explaining what you think was wrong with the court of appeals' decision and why those errors are important enough for the Texas Supreme Court to agree to hear your case. Texas Rule of Appellate Procedure 53.1 describes the necessary parts of a Petition for Review. Your petition must have:

- (1) A list of the identities of parties and counsel in both the trial and appellate courts;
- (2) A table of contents and a table of cases, statutes, and other legal authorities discussed in your petition (The cases must be listed in alphabetical order.);
- (3) A statement of the case that, in less than a page, provides the following information: (a) a short description of the type of case (such as personal injury, contract, or a suit on a note); (b) the name of the judge who signed the trial court judgment; (c) the designation of the trial court and the county in which it is located; (d) what the trial court decided; (e) the parties in the court of appeals; (f) the district of the court of appeals; (g) the names of the justices who participated in the court of appeals' decision, who wrote the opinion, and who wrote any dissenting or concurring opinion; (h) the citation<sup>6</sup> for the court of appeals' opinion, if available; and (i) what the court of appeals decided;
- (4) A statement of jurisdiction citing the statute allowing the Supreme Court to hear the case (usually TEX. GOV'T CODE § 22.001(a)(6));
- (5) A statement of the issues or points of error presented for review (note that any complaints about the trial court's action must have been raised in the brief in the court of appeals);
- (6) A statement of the facts supported by record references;
- (7) A summary of the argument;

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<sup>6</sup> The "citation" is the volume and page reference to the Southwest Reporter or other publication service that has published the opinion. Not all opinions are published in a reporter service, and so your case may not have an official citation.

(8) An argument section, which includes a legal discussion of why the court of appeals' decision is wrong and an explanation of why those errors are important enough that the Supreme Court should hear the case; and

(9) A “prayer” or short conclusion that tells the Court what relief you are seeking.

TEX. R. APP. P. 34.2. In addition, you must either include or separately bind an “Appendix,” which must contain these documents: (1) the trial court’s judgment; (2) the jury charge and verdict, if any, or the trial court’s findings of fact and conclusions of law, if any; (3) the opinion and judgment of the court of appeals; and (4) a copy of any contract, rule, statute, constitution, or similar provision that is central to the argument in the petition. TEX. R. APP. P. 53.2(k). The Appendix may include other materials from the record that you believe would be helpful to the Court in deciding your case, but it may not include evidence that was not made part of the record in the trial court and the court of appeals.

Generally speaking, the Statement of the Facts should explain to the Court what the case is about and what happened in the trial court and the court of appeals in objective terms—*i.e.*, without taking sides or making arguments. It should only present the facts from the trial court record that are relevant to the issues to be decided on appeal. ***You may not discuss facts that were never presented to the trial court or that are not included in the record.*** Every statement of fact must be accompanied by an appropriate and specific reference to the record. The trial court clerk typically paginates the Clerk’s Record to make it easier to cite to specific pages.

When referring to the parties in your brief, you should use their names, rather than referring to their party designations. For example, use “Jane Smith” not “the petitioner.”

The Petition for Review cannot be longer than 15 typewritten pages. TEX. R. APP. P. 53.6. However, only the statement of the facts, the summary of argument and argument sections, and the prayer count toward the 15-page limit. TEX. R. APP. P. 53.6.

The petition must be printed on 8½ by 11 inch paper that is white (or nearly white) and opaque, meaning that it is not transparent. TEX. R. APP. P. 9.4(b). The text must be double-spaced (except as to block quotes, which can be single-spaced), with 1-inch margin on all sides. 9.4(c) & (d). As noted above, you can use 10-character-per-inch, “nonproportionally spaced Courier typeface” (each character uses an equal amount of horizontal space) or 13-point or larger font if you use “proportionally spaced” typeface (horizontal space used by a character varies). TEX. R. APP. P. 9.4(e). Each petition must be signed by the person filing it. TEX. R. APP. P. 9.1.

#### **B. Response to the Petition for Review**

After the Petitioner for Review is filed, the respondent has 30 days to do one of two things: (1) file a Response to the Petition for Review, or (2) file a letter saying that the Respondent will not file a Response unless the Court requests one (this is called a “waiver letter”). TEX. R. APP. P. 53.3; *see also* Form 2 attached. If you are the Respondent, you may want to consider filing a waiver letter. The Court denies review in about half the cases filed with it without asking for a response. If you file a waiver letter, and the Court asks for a response, the letter from the Court requesting the response will state the deadline for filing.

If you choose to file a response, or if the Court later asks for one, the Response is your opportunity to tell the Court why the court of appeals’ decision should be affirmed or allowed to stand. The Response to the Petition for Review must have the same parts as the Petition for Review, *except* that a statement of the issues, a statement of jurisdiction, a statement of the case, and an appendix are optional. TEX. R. APP. P. 53.3. The page limit for the Response to the Petition for Review is the same as that for the Petition for Review—15 pages. TEX. R. APP. P. 53.6. A signature by the person filing the brief is also required. TEX. R. APP. P. 9.1.

**C. The Petitioner’s Reply**

The Petitioner may file a reply to a response if one is filed. The Petitioner’s Reply is limited to 8 pages. TEX. R. APP. P. 53.6. The Reply must be filed within 15 days of the filing of the Response to Petition for Review. TEX. R. APP. P. 53.7(e). However, the Clerk’s office typically forwards the Petition and any Response or Waiver to the justices of the Court on the Tuesday morning after the Response or Waiver is received without waiting on the reply. So, you may want to consider filing the reply brief earlier so that it is included in the briefing package for your case when it is first forwarded to the Court.

**D. Number of Copies**

You must file an original and eleven copies of the Petition for Review, a waiver letter or the Response to the Petition for Review, or the Petitioner’s Reply and any separately bound Appendix with the Supreme Court and serve the other party or parties with one copy each. TEX. R. APP. P. 9.3(b), 9.5. Rule 9.5(b) provides that you can serve the other parties by personal delivery, U.S. mail, commercial delivery service, or facsimile. TEX. R. APP. P. 9.5(b).

**E. Binding, Covers, and Other Formatting Requirements**

The Petition, the Response, the Reply, and any separate Appendix must have opaque, durable front and back covers, which should not be plastic or dark colored (*e.g.*, red, black, or dark blue) so that the clerk can affix a permanent and legible file-stamp to the cover showing the date of the filing. TEX. R. APP. P. 9.4(f). If you file your Appendix as a separate document, rather than attaching it to your Petition or Response, it must also have a durable, light-colored cover. TEX. R. APP. P. 9.4(h). The front cover of every copy of your Petition, Response, or Reply (and the cover for any separately bound Appendix) must state:

- (1) the style of the case (the names of the parties on appeal);

(2) the case number for the case assigned by the Supreme Court (if no number has yet been assigned, the number can be left blank);

(3) the title of the document and the name of the party filing it; and

(4) the name, mailing address, telephone, fax number, and any State Bar identification number for the lead counsel, if any, filing the document; and

TEX. R. APP. P. 9.4(g). The Court Clerk recommends that the case number be printed in 34-point font.

The Petition, the Response, the Reply, and any separate Appendix must be securely bound “so as to ensure that it will not lose its cover and fall apart in regular use.” TEX. R. APP. P. 9.4(f). We recommend either using a heavy strength staple on the left top corner or durable GBC (plastic spiral) binding along the left side of the brief. Rule 9.4(f) requires that it be bound in such a way that it lays flat when open.

## **VIII. ACTION ON PETITION**

### **A. Court May Request Further Briefing**

If the Respondent has filed a waiver letter, the justices will review the Petition for Review to determine whether they would like a response. The Court may also ask the court of appeals’ clerk to forward the record. The Petitioner is required to pay the cost of forwarding the record from the court of appeals to the Supreme Court.

If a Response is filed initially, or if one is filed after the Court requests it, the Court will review the case to determine whether to deny review or to request further briefing. If the Court requests further briefing, the parties will be allowed to file another set of briefs, as explained in the next section. TEX. R. APP. P. 55.1. If the Court asks for additional briefing, it will also ask the clerk of the court of appeals to forward the record at Petitioner’s expense. Typically, the

Court will request further briefing without deciding whether to grant review, but a request for briefing indicates that at least three justices are interested in learning more about your case.

**B. Court May Deny Review**

Either with or without a Response, the Court may decide not to hear a case and deny the petition for review. TEX. R. APP. P. 56.1(b). The court clerk will send the parties a notice that the petition has been denied. TEX. R. APP. P. 56.4. The Court's ruling will also be announced on a list of orders that the Court issues most Fridays. You can also sign up for the "Case Mail" service on the Court's website, which will send you an email notice when certain events occur with respect to your case, such as a ruling on the petition.

**IX. BRIEFING ON THE MERITS**

If the Court requests further briefing, the parties will have the opportunity to file more extensive argument with the Court in briefs that have longer page limits than allowed at the petition stage of the review process. TEX. R. APP. P. 55. If, as either Petitioner or Respondent, you feel you have no more to add to what you have already told the Court in your earlier papers, you can submit an original and eleven copies of a letter to the Clerk of the Court stating that you have opted not to file any additional briefing. The rules also provide that a party may file twelve copies of its brief from the court of appeals instead of filing a new brief on the merits in the Supreme Court. TEX. R. APP. P. 55.5.

**A. Petitioner's Brief on the Merits**

The Petitioner's Brief on the Merits follows the same form as the Petition for Review, with the same required contents. TEX. R. APP. P. 55.2. The page limit is 50 pages; only the statement of the facts, the summary of argument and argument sections, and the prayer count toward the 50-page limit. TEX. R. APP. P. 55.6. The letter from the Court requesting full briefing should state a date by which the Petitioner's Brief on the Merits must be filed. TEX. R. APP. P.

55.7. If no date is specified, the brief is due 30 days from the date of the letter requesting briefing on the merits. TEX. R. APP. P. 55.7.

**B. Respondent’s Brief on the Merits**

The Respondent’s Brief on the Merits follows the same form as the Response to Petition for Review, with the same required contents. TEX. R. APP. P. 55.3. The page limit is 50 pages; only the statement of the facts (which is optional), the summary of argument and argument sections, and the prayer count toward the 50-page limit. TEX. R. APP. P. 55.6. The letter from the Court requesting full briefing should state a date by which the Respondent’s Brief on the Merits must be filed. TEX. R. APP. P. 55.7. If no date is specified, the brief is due no later than 20 days after the date of receiving the Petitioner’s Brief on the Merits. TEX. R. APP. P. 55.7.

**C. The Petitioner’s Reply Brief on the Merits**

The petitioner may file a reply brief. TEX. R. APP. P. 55.4. Petitioner’s Reply Brief on the Merits is limited to 25 pages. TEX. R. APP. P. 55.6. The letter from the Court requesting full briefing should state a date by which the Petitioner’s Reply Brief on the Merits must be filed. TEX. R. APP. P. 55.7. If no date is specified, the brief is due no later than 15 days after the date of receiving the Respondent’s Brief on the Merits. TEX. R. APP. P. 55.7.

**D. Extension of Time**

If you are unable to prepare your brief on the merits in the time frame allowed, you can seek an extension of time. Again, it is advisable that you seek the extension long before the brief is due. Please refer to the requirements set out in Rule 10.5(b) and part V, above. An example of a motion to extend time for filing a brief on the merits is Form 3.

**X. ACTION AFTER FULL BRIEFING**

After full briefing, the Court will decide whether or not to hear the case. The Court denies review of most cases, agreeing to hear only about ten percent of the cases filed.

## **A. Court May Grant Review**

If the Court decides to hear the case, it will take one of two actions: (1) it will set a date for oral argument to the Court and then issue an opinion later after the argument; or (2) it will issue an opinion deciding the case, called a per curiam opinion, without hearing oral argument.

**1. Oral Argument Followed By Opinion.** If the Court believes that oral argument will help it decide the case, it will send a notice to the parties setting a date and time for hearing oral argument. TEX. R. APP. P. 59.2. The person presenting argument should be thoroughly familiar with the record, the legal issues and arguments presented, and the authorities cited by both parties when making an oral argument. Remember that the purpose of the argument is to answer the Court's questions, not to make a speech about why your side should win. *See* TEX. R. APP. P. 59.3. You can watch videotapes of oral argument in cases heard by the Court on the website of the St. Mary's School of Law at: <http://www.stmarytx.edu/law/webcasts>.

After the argument, the Court will prepare a written opinion explaining the Court's final decision, including its reasons. On average, an opinion in a case issues about one year after oral argument. The opinion will be mailed to you. TEX. R. APP. P. 63. You can also sign up for the "Case Mail" service on the Court's website, which will send you an email notice when certain events occur with respect to your case, such as the issuance of an opinion.

**2. Per Curiam Opinion Without Oral Argument.** The Court may issue an opinion without hearing argument. TEX. R. APP. P. 59.1.

## **B. Court May Deny Review**

After requesting full briefing, the Court may decide not to hear a case and deny the petition for review. TEX. R. APP. P. 56.1(b). The court clerk will send the parties a notice that the petition has been denied. TEX. R. APP. P. 56.4.

## **XI. MOTIONS**

A motion is a written request asking the Court to make a special ruling in the appeal. Either the petitioner or the respondent may file a motion with the Court. For example, if you want to obtain an extension of time to file your brief, you would make your request by filing a motion (original and eleven copies) with the Court and serve a copy of the motion on the other party to the appeal. Your motion should state the reasons why you are making a particular request. TEX. R. APP. P. 10.1. Be specific about what relief you need and why you need it. Rule 10.5.(b) sets forth specific requirements for motions for extensions of time.

If your motion will not be opposed, you should state that it is “Unopposed” in the title of the motion. Every motion must contain a certificate stating that you have conferred with the other parties and that they do or do not oppose the relief sought. TEX. R. APP. P. 10.1(a)(5). If you are unable to reach your opposing party or their counsel (if they are represented), then state in your certificate that you have made reasonable attempts to confer with the other parties to determine their position on the substance of the motion. Motions can be rejected by the Clerk’s office if the certificate of conference is not included. Do not submit a proposed order.

The Court will inform you of its decision by mailing you and the other parties to the appeal notice of the order granting or denying your motion. The Court’s rulings are also posted on the Court’s website under the case information/docket sheet for the appeal, and you may also receive notice of the ruling if you are signed up on “Case Mail” to receive such notices.

## **XII. MOTION FOR REHEARING**

Once the Court renders its judgment or renders an order disposing of your petition for review, you have the option to file a motion for rehearing. Such a motion must be filed within 15 days from the date of the final decision, TEX. R. APP. P. 64.1, and an extension of time may be sought up to 15 days after that period by filing a motion in compliance with Rule 10.5(b). *See*

TEX. R. APP. P. 64.5. We recommend that you attempt to meet the deadline or if you know an extension will be needed, file your request for the extension as soon as possible. The motion for rehearing must specify the grounds for reconsidering the decision or judgment and be no longer than 15 pages. TEX. R. APP. P. 64.2, 64.6. The other side need not file a response unless the Court requests one. TEX. R. APP. P. 64.3.

### **XIII. AWARD OF COSTS AND SANCTIONS IN THE SUPREME COURT**

If the Court agrees to hear a case and issues an opinion, it will also decide who pays the costs incurred in the appeal. Recoverable costs include:

- (1) Fees charged by the Clerk of the Court;
- (2) Cost of the preparation of the Clerk's Record and Reporter's Record;
- (3) Other costs as directed by the Court.

Texas Rule of Appellate Procedure 60.4 explains the procedure for awarding costs by the Supreme Court. "Prevailing parties" are generally awarded their costs on the appeal. TEX. R. APP. P. 60.4. If you are the petitioner, and the Supreme Court reverses the court of appeals' judgment, you are the "prevailing party," and the Court will most likely award you your appeal costs from the respondent. If you are the petitioner, and the Court affirms the court of appeals' judgment, the Court will probably order that you pay the appellate costs of the respondent. The Court may decide not to award costs to either side. It also has the discretion to tax costs otherwise as required by law or for good cause. TEX. R. APP. P. 60.4.

You need to check the judgment, which is a separate document from the Court's opinion, to insure that costs were awarded appropriately. If you want to request the Court to reconsider the award of costs, you must do so in the form of a motion for rehearing filed within 15 days after the judgment is rendered. TEX. R. APP. P. 64.1.

If the Supreme Court finds that the filing of a petition for review is frivolous, it can award the other party damages, including costs, fees and reasonable attorney fees on appeal. TEX. R. APP. P. 62.

#### **XIV. SUPREME COURT OF TEXAS' PRO BONO PROGRAM**

The Court and the Pro Bono Committee have recently implemented a joint pilot program (“Pro Bono Program” or “Program”) to help pro se parties who are unable to pay for appellate counsel by matching them with volunteer lawyers who agree to represent them without charging fees for the legal services. Cases are potentially eligible for the Program when the Court requests full briefing of a pro se litigant’s appeal and refers it to the Committee. Even if you were assisted by counsel in filing your petition for review, you may be eligible for the Program if you meet the financial eligibility requirements and the Court requests further briefing. As explained above at part VIII.A, when three justices of the Court vote for more comprehensive briefing in a particular case, the Court will order full briefing on the merits of the appeal.

The two criteria for inclusion in the Program are: (i) the petition presents one or more issues on which at least three Justices have requested merits briefing; and (ii) the pro se litigant meets the financial eligibility requirement for the Program. The Pro Bono Program is available to parties who meet the criteria for indigence under the Texas Rules of Civil and Appellate Procedure or otherwise would satisfy the requirement for representation by certain organizations providing legal services to the poor, such as Legal Services Corporation or Volunteer Legal Services.

The financial eligibility requirement for participation in the Program is defined as follows:

Participation in the Supreme Court’s Pro Bono Pilot Program is available to litigants who satisfy the Program’s financial eligibility requirements. For purposes of the Program, “financial eligibility” means that the party has filed an

affidavit of indigence in accordance with Texas Rule of Appellate Procedure 20, is proceeding without paying costs of court, and either no contest was made to the affidavit, or the contest was sustained in favor of the indigent party.

Pro se parties can also satisfy the financial eligibility requirement for the Program if, due to their financial circumstances, they are receiving, or are eligible to receive, free legal services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (“IOLTA”) program. In this circumstance, the attorney must file an IOLTA certificate confirming that the IOLTA-funded program screened the party for income eligibility under the IOLTA income guidelines.

To participate in the Pro Bono Program, you may be required to execute an affidavit under oath as to your financial circumstances.

Participation in the Program is purely voluntary, and if your case qualifies for inclusion, you must apply to the Pro Bono Committee in order to participate in the Program. A sample request for inclusion in the Program is attached as Form 4. If you decide to be included in the Program, the Committee will seek placement of the case with its pro bono volunteer attorneys. You should be aware that the process of locating a volunteer lawyer will likely involve the transmission of background information about the case through email distribution to potential volunteers, as well as posting of minimal, publicly available facts about the case, such as the parties, the issues presented, and any urgency of the proceedings, on the Internet, solely for the purpose of locating a volunteer.

If your case qualifies and you are interested in applying, you must contact the Program Liaison, Michael S. Truesdale, Law Office of Michael S. Truesdale PLLC, at 515 Congress Avenue, Suite 2355, Austin, Texas, 78701.

If a volunteer lawyer is matched with your case through the Program, that lawyer will be your lawyer in handling the appeal on your behalf in the Supreme Court from that point forward. He or she will prepare the briefs and any necessary motions and present oral argument to the Court if argument is ordered. The scope of the attorney’s representation of you is limited to the

appeal in the Supreme Court of Texas and terminates once those proceedings are concluded—typically after the opinion issues or the Court rules on any timely filed motions for rehearing. If you are unsuccessful in this Court and desire to go forward to the United States Supreme Court, you will need to make other arrangements for counsel to represent you in that court unless your appointed counsel agrees in writing to undertake the further representation.

**Please note that the Committee only attempts to provide volunteer lawyers for cases that meet the Program requirements. Members of the Committee do not act as lawyers for anyone in the Program. There is no guarantee that pro bono counsel can be found to represent you.**

For questions or comments about the Pro Bono Program, please contact [webmaster@tex-app.org](mailto:webmaster@tex-app.org).

## **XV. SAMPLE FORMS**

To help you with your Supreme Court appeal, sample forms are attached to provide guidance. These forms are:

- Form 1        Motion for Extension of Time to File Petition for Review
- Form 2        Sample Waiver Letter for Respondent
- Form 3        Motion for Extension of Time to File Brief
- Form 4        Application for Inclusion in Pro Bono Program

In addition, sample petitions for review, responses to petitions for review, replies, and briefs on the merits can be viewed on the internet through the Supreme Court's website at:

[www.supreme.courts.state.tx.us/ebriefs/ebriefs.asp](http://www.supreme.courts.state.tx.us/ebriefs/ebriefs.asp).

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF TEXAS

---

NAME OF PETITIONER,  
*Petitioner,*

v.

NAME OF RESPONDENT,  
*Respondent.*

---

**FIRST [UNOPPOSED] MOTION FOR EXTENSION OF TIME  
TO FILE PETITION FOR REVIEW**

---

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner files this First [Unopposed] Motion for Extension of Time to File Petition for Review under Tex. R. App. P. 10.1, 10.5(b), and 53.7(f). In support of this motion, Petitioner shows the following:

1. The Court of Appeals for the [insert number] district in [insert city] rendered its opinion and judgment in [insert name of case in court of appeals], No. [court of appeals' docket number], on [date]. The petition for review is due no later than [date].

2. Petitioner requests an extension of time of thirty days, to [date]. This is Petitioner's first request for an extension of time in this case.

3. Petitioner relies on the following facts as a reasonable explanation for the requested extension of time. Petitioner's counsel [or pro se Petitioner], in addition to

preparing a brief on the merits in this case must also devote time to the following additional matters: [list matters here].

4. The undersigned has conferred with opposing counsel, who indicated there was no opposition to this request. [Alternative: The undersigned has conferred with opposing counsel, who indicated this motion is opposed.]

Therefore, Petitioner prays that this Court grant this motion for extension of time.

Respectfully submitted,

---

Name of person filing motion  
State bar number, if any  
Address  
Phone number  
Telecopy

#### **CERTIFICATE OF CONFERENCE**

As required by Tex. R. App. P. 10.1(a)(5), I certify that I have conferred with [counsel for other parties], who indicated that this motion is unopposed. [Alternative: I certify that I have conferred with [counsel for other parties], who indicated that this motion is opposed.]

---

Name of person filing motion

#### **CERTIFICATE OF SERVICE**

I certify that, on [date of mailing], I served a copy of this motion by First Class, United States mail on the following:

[Names and addresses of all counsel and unrepresented parties]  
Counsel for [identify party represented]

---

Name of person filing motion

[date]

Mr. Blake Hawthorne  
Clerk, Supreme Court of Texas  
Post Office Box 12248  
Austin, Texas 78711

Re: No. [Supreme Court docket number], [name of case]

Dear Mr. Hawthorne:

By this waiver letter, the respondent respectfully waives the filing of a response to the petition for review. It is respondent's understanding that the Court will not grant the petition without first requesting a response.

Sincerely,

---

Name of person filing letter  
State bar number, if any  
Address  
Phone number  
Telecopy

### **CERTIFICATE OF SERVICE**

I certify that, on [date of mailing], I served a copy of this motion by First Class, United States mail on the following:

[Names and addresses of all counsel and unrepresented parties]  
Counsel for [identify party represented]

---

Name of person filing letter

# No. 99-9999

---

IN THE  
SUPREME COURT OF TEXAS

---

NAME OF PETITIONER,  
*Petitioner,*

v.

NAME OF RESPONDENT,  
*Respondent.*

---

[UNOPPOSED] MOTION FOR EXTENSION OF TIME TO FILE  
PETITIONER'S BRIEF ON THE MERITS

---

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner files this [Unopposed] Motion for Extension of Time to File Petitioner's Brief on the Merits and in support shows the following:

1. Petitioner's Brief on the Merits is due on [date]. Petitioner requests an extension of time of thirty days, to [date], to file its Brief.

2. Petitioner relies on the following facts as a reasonable explanation for the requested extension of time. Petitioner's counsel [or pro se Petitioner], in addition to preparing a brief on the merits in this case must also devote time to the following additional matters: [list matters here].

**Form 3: Motion for Extension of Time to File Petitioner's Brief**

3. The undersigned has conferred with opposing counsel, who indicated there was no opposition to this request. [Alternative: The undersigned has conferred with opposing counsel, who indicated this motion is opposed.]

Therefore, Petitioner prays that this Court grant this motion for extension of time.

Respectfully submitted,

---

Name of person filing motion  
State bar number, if any  
Address  
Phone number  
Telecopy

#### **CERTIFICATE OF CONFERENCE**

As required by Tex. R. App. P. 10.1(a)(5), I certify that I have conferred with [counsel for other parties], who indicated that this motion is unopposed. [Alternative: I certify that I have conferred with [counsel for other parties], who indicated that this motion is opposed.]

---

Name of person filing motion

#### **CERTIFICATE OF SERVICE**

I certify that, on [date of mailing], I served a copy of this motion by First Class, United States mail on the following:

[Names and addresses of all counsel and unrepresented parties]  
Counsel for [identify party represented]

---

Name of person filing motion

[date]

Michael S. Truesdale  
Program Liaison  
Supreme Court Pro Bono Pilot Program  
c/o Law Office of Michael S. Truesdale  
515 Congress Avenue, Suite 2355  
Austin, Texas 78701  
[mike@truesdalelaw.com](mailto:mike@truesdalelaw.com)

Re: No. [Supreme Court docket number], [name of case]

Dear Mr. Truesdale:

Petitioner requests that the State Bar of Texas Appellate Section's Pro Bono Committee consider this request for inclusion in the Supreme Court of Texas' Pro Bono Pilot Program.

[Include all that apply:]

[Currently, Petitioner is proceeding pro se and has filed a petition for review in this matter.]

[Currently, Petitioner is being represented by the undersigned counsel and has filed a petition for review. If the Court deems it advisable that further briefing and/or argument be provided, Petitioner requests that his/her case be considered for the appointment of pro bono counsel.]

[Petitioner is proceeding as an indigent in this proceeding and/or meets the financial eligibility requirements for the Program.]

[Petitioner is submitting the attached affidavit of indigence for the Committee's consideration.]

[The Supreme Court has requested that the parties submit briefs on the merits by letter dated \_\_\_\_\_, \_\_\_\_\_.]

Very truly yours,

---

Name of person filing motion  
State bar number, if any  
Address  
Phone number  
Telecopy