



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS**

CHIEF JUSTICE
TERRIE LIVINGSTON

TIM CURRY CRIMINAL JUSTICE CENTER
401 W. BELKNAP, SUITE 9000
FORT WORTH, TEXAS 76196

CLERK
DEBRA SPISAK

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In 2004, the Appellate Section of the State Bar of Texas and the Second Court of Appeals worked together to identify key information needed by appellate attorneys and pro se litigants to practice effectively before the court. To assist the court in this effort, the Appellate Section collected and formatted the relevant information and published it in the Appellate Advocate in February 2005. *This information was updated by the court in August 2011 and the court intends to keep the information current for the use of persons with matters before the court.*

Internal Operating Procedures - Second District Court of Appeals (Fort Worth)

August 2011

The Basics

1. Court's Address: Tim Curry Criminal Justice Center, 401 W. Belknap Street, Suite 9000, Fort Worth, Texas 76196
2. Telephone number: Phone: (817) 884-1900, Fax: (817) 884-1932
3. Website address: <http://www.2ndcoa.courts.state.tx.us>; voluntary ebriefs: ebrief2nd@txcourts.gov
4. Names of Justices: Chief – Terrie Livingston (C.J.), Lee Ann Dauphinot, Anne Gardner, Sue Walker, Bob McCoy, Bill Meier, and Lee Gabriel.
5. Chief Staff Attorney: Lisa West
6. Clerk of the Court: Debra Spisak
7. Local Rules (LR): The court has published written local rules and unpublished written internal operating procedures.

The Ins and Outs

PROCEDURE	WHAT AND HOW TO FILE	HOW HANDLED	COURT'S PARTICULAR PRACTICES	SPECIAL NOTES
Motions	Original only, no copies. LR 4. Certificate of conference required on all motions, except motions for rehearing. The court will draft its own orders.	Motions that may be decided by a single justice and are filed before a panel is assigned are decided by a single justice, unless the justice responsible for deciding the motion requests that a motion panel be assigned. After a panel is assigned to a case, all motions pertaining to the case generally are submitted to the panel or head of panel. First motions for	If the motion is an agreed motion, it is submitted when filed. If it is a contested motion, it is held for 10 days before submission to the court. Both pre-submission motion panels and appeal panels are set in the spring for the following fiscal year. Motion panels change every 6 weeks except in July and August when they change weekly; the justice who decides single justice motions changes every 6 weeks from September through	All motions are considered and decided any day of the week. Rulings on motions for rehearing are announced on Thursdays. All motions for extensions of time in criminal cases must state whether the appellant is incarcerated. LR 4(c).

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		<p>extension of time to file briefs for 30 days or less—20 days or less in accelerated appeals—are generally handled by the clerks. First motions for extension of time are granted upon a reasonable explanation of the need for an extension. Subsequent motions or motions asking for more than 30 days—20 days in accelerated appeals—are submitted to the court and disfavored without a reasonable explanation of the need for additional time.</p>	<p>June and weekly in July and August.</p>	
<p>Briefs</p>	<p>Original plus 4 copies.</p>	<p><u>Appeals:</u> The court uses the filing deadlines in TRAP 38.6(a-b), but those dates are not set until the record is filed. The parties are notified by letter of the filing dates. LR 1(J). <u>Original Proceedings:</u> If the court requests a response, it generally sets a 10-day deadline. Sometimes circumstances warrant a shorter or longer deadline. LR 2(B). REPLY BRIEFS: <u>Appeals:</u> Same as deadlines in TRAP 38.6(c); notice provided by clerk. LR 1(J). Up to 7 days before submission, the court will also accept, w/o a motion for leave, a further responsive brief. LR 1(C). <u>Original Proceedings:</u> Generally 5 days after response brief is filed, but the court may consider and decide the case before a reply</p>	<p>Unless requested by the court, all amended, supplemental, post-submission, and letter briefs must be accompanied by a motion for leave to file. LR 1(C). Letter briefs must be double-spaced and no longer than 2 pages. LR 1(D). Aggregate number of pages of all briefs filed by a party cannot exceed 90 pages. LR 1(G). If appendix is separately bound, must file original and 4 copies. LR 1(I).</p>	<p>In civil cases, appellant's brief should be light blue, appellee's brief should be red, intervenor's or amicus's brief should be green, and any reply brief should be gray. LR 1(A)(8). In criminal cases, appellant's brief should be light blue or white, and the State's or appellee's (when State is appellant) brief should be yellow or white. LR 1(A)(8). The court asks, but does not require, that briefs filed be accompanied by an electronic copy of the brief emailed to ebrief2nd@txcourts.gov or submitted via CD in searchable pdf or updated Word or WordPerfect format. LR 1(K).</p>

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		is filed. TRAP 52.5; LR 2(B).		
Case Assignment		Generally, a panel is assigned when the appellee's brief is filed. The court has a rotation cycle so as to achieve different compositions of panels. Judges are reassigned every 6 weeks from September through June.	Judges occasionally meet before argument/submission, always after argument/submission, and occasionally both before <u>and</u> after argument/submission. If neither party requests oral argument, the opinion may be drafted prior to conference.	Parties can always call to find out who is on their panel. <u>Appeals</u> : Panels are assigned when the appellee's brief is filed. Parties are notified at that time. <u>Original Proceedings</u> : Assigned at the time of filing. If a response is requested, the order will identify the panelists.
Oral Argument	Request oral argument on cover of the brief	When oral argument is granted, the court allots 15 minutes per side and a 5 minute rebuttal for appellant/relator. Allotment of more time is at the discretion of the court.	<u>Appeals</u> : Requests for oral argument are not automatically honored. Requests are screened in certain categories of cases. The factors considered in determining whether to grant oral argument include whether the decisional process would be significantly aided by argument. TRAP 39.1. After screening and recommendation by a staff attorney, the assigned author decides whether to grant oral argument. If ordered submitted w/o argument, the court will consider an objection by a party requesting argument in its discretion. <u>Original Proceedings</u> : The judges on the panel decide whether to grant oral argument.	If only one side requests oral argument, the court will either have both sides argue or the case will be submitted on the briefs. TRAP 39.7, 39.8.
Voting		Voting occurs after oral argument. For most cases submitted w/o argument, voting occurs on the date the case is submitted on the briefs. Parties are notified of the submission date by letter.	The court has a weekly submission docket that includes cases submitted both orally and on briefs. After oral argument, all cases on the submission docket for a particular date are voted on in panel conference.	Occasionally, in non-oral argument cases, the panel votes after reading a draft of the opinion prepared by one of the panel members.
Opinions		Internal guidelines recommend that the author circulate an initial draft to panel members 6 months	Author is chosen on a random basis by the Clerk of court. For appeals, the author is	Court releases its opinions on Thursdays. Opinions in original proceedings can be handed down on any day. The proposed opinion

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		<p>after submission. The guidelines suggest that each panel member has 14 days to sign off on the draft, request a panel conference, or note that he or she intends to draft a concurrence or dissent. The panel member then has 60 days to circulate the draft of a concurrence or dissent. Then, additional time is allowed for subsequent drafts of opinions.</p>	<p>assigned approximately 2 weeks before submission. In original proceedings, the author is assigned when the proceeding is filed.</p> <p>If neither party requests oral argument, the opinion may be drafted prior to conference.</p>	<p>(including concurrences and dissents) is circulated to the panel first and then the entire court.</p>
Motions for Rehearing	<p>Original only.</p> <p>No certificate of conference is required.</p>	<p>Motions for rehearing are initially circulated to author first, then to remainder of panel. Author makes recommendation. The court cannot grant rehearing unless a response to a motion for rehearing has been filed or requested. In rare circumstances, the court may choose to issue a corrected opinion sua sponte.</p>		<p>Motions for rehearing en banc are initially circulated to the author first, then the panel, and then the entire court. The author makes a recommendation. The court may sit en banc w/o a request, but had done so very rarely.</p>
Original Proceedings	<p>Original plus 4 copies of all documents, including appendices. Only the original of a reporter's record need be filed. LR 2.</p>	<p>Once filed, an original proceeding is immediately assigned to a staff attorney, who prepares a detailed memo, with a recommendation, that is circulated to the panel.</p> <p>If a motion requests emergency relief, it is circulated immediately and dealt with ASAP. If there is no motion for emergency relief, the original proceeding is addressed as soon as possible within the normal course of business.</p>	<p>Granting emergency relief requires 2 out of 3 panel judges. In extremely rare circumstances, a single judge may grant—but not deny—emergency relief.</p>	<p>Oral argument requires a vote of 2 out of 3 of the panel judges.</p> <p>Original proceedings panels change every 3 weeks.</p>

Technology

1. Court subscribes to Westlaw.
2. Court prefers citations from both U.S. and S. Ct., unless *cert. denied*, then it cites only the U.S. if available.
3. Currently, the court may receive CD-Rom versions of the record and other documents in addition to hard copies but not in lieu of hard copies. Reporter's records on CD-Rom are very helpful because they can be searched using keywords.
4. Court accepts fax filings for motions and letters only. The fax filings must be less than 10 pages. If a filing fee is required for a motion, an order will not be issued until the filing fee is paid.
5. Parties may voluntarily file ebriefs but these are not considered official filings at this time. Email your briefs to ebrief2nd@txcourts.gov or provide them on CD in accordance with LR 1.K.
6. Court does not distribute its orders electronically.
7. Court records oral arguments digitally and posts them on its website.
8. If a party is relying upon a former version of a statute, it is helpful to attach a copy of the former version.

Appellate Mediation

1. Court has a program for appellate mediation.
2. A case should be mediated if it is determined the parties have indicated an interest in mediation. Interested parties have to complete the Addendum to Civil Docketing Statement.
3. The responsibility to oversee appellate mediation rotates every 6 weeks among the justices except in July and August when it rotates weekly.
4. Any contact with the court regarding mediation must be through the clerks' office.
5. Court allows the parties to select their own mediator.
6. If parties cannot agree on a mediator, either the administrative judge (if the case has not been assigned to a panel) or the judge who is head of the panel selects the mediator. The court maintains a list of local attorneys who have expressed an interest to the court in serving as mediators that the judge may consult.

Fees

1. Appeal: \$175 (civil only)
2. Original Proceeding: \$125
3. Motions: \$10 (civil only); Motions for Rehearing \$15 (civil only)
4. Response to Motion: no fee
5. Other fees: Copies are \$0.10 per page; certified copies are \$1.00 per page (\$5.00 minimum); copies of oral arguments before September 2, 2008 are \$1.00 per tape; retrieval fee if case is in storage is \$20.00; shipping fee to send case to the Supreme Court (if requested) is \$15.00.

Miscellaneous

1. After hours filing may be filed with a justice who is willing to accept it. TRAP 9.2(a)(2). To set up after hours filing, call the clerks' office during business hours if possible. Outside of normal business hours, call the after hours number listed in the court's phone recording.
2. The court still uses visiting judges but does not use any visiting judge "regularly." The court uses visiting judges as often as necessary within budget limitations.
3. The court rarely decides to sit en banc. The court may be convened en banc for the purposes of hearing or rehearing any case on the Chief Justice's own motion or upon a motion supported by a majority of the court. An average of 3 cases a year are heard en banc.