

IN THE SUPREME COURT OF TEXAS

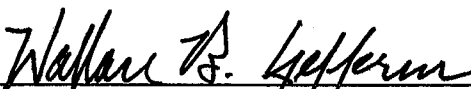
Misc. Docket No. 05- **9201**

APPROVAL OF LOCAL RULES FOR THE TENTH DISTRICT COURT OF APPEALS

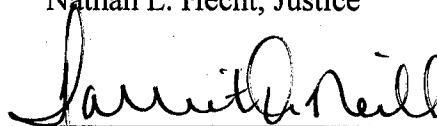
ORDERED that:

Pursuant to Texas Rule of Appellate Procedure 1.2, the following Local Rules for the Tenth District Court of Appeals are approved.

In Chambers, this 7th day of December, 2005.


Wallace B. Jefferson, Chief Justice


Nathan L. Hecht, Justice


Harriet O'Neill, Justice

J. Dale Wainwright

J. Dale Wainwright, Justice

Scott Brister

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green

Paul W. Green, Justice

Phil Johnson

Phil Johnson, Justice

Don R. Willett, Justice



Local Rules for the Tenth Court of Appeals Waco, Texas

Effective [when approved]

RULE 1. SCOPE OF LOCAL RULES

(a) These rules have been approved by the Supreme Court of Texas and the Court of Criminal Appeals and apply to all cases in the Tenth Court of Appeals (the Court).

(b) These rules supplement the procedures in the Texas Rules of Appellate Procedure and, unless otherwise specified, apply to both civil and criminal cases. If a local rule conflicts with the Rules of Appellate Procedure, the Rules of Appellate Procedure control.

(c) These rules do not extend or limit the jurisdiction of the Court.

(d) The Court may require any document not prepared in conformity with these rules to be rewritten. If another non-conforming document is filed, the Court may strike the document.

(e) Subject to the limitations of Rule of Appellate Procedure 2, the Court may, to expedite a decision or for other good cause, suspend the operation of a local rule in a particular case and order a different procedure.

RULE 2. APPEARANCE

(a) Only attorneys of record will be allowed to practice before the Court. A party may appear *pro se* unless an attorney of record is designated.

(b) If an out-of-state attorney wishes to practice before the Court, a motion to appear *pro hac vice* shall be filed.

RULE 3. EX PARTE COMMUNICATIONS

Under Rule of Appellate Procedure 9.6, parties and counsel may communicate with the Court about a case only through the Clerk. Members of the legal staff of the Court are subject to the same rules regarding *ex parte* communications as the justices. Therefore, parties and counsel may not communicate about a case with a justice or any member of the legal staff in person or by letter, phone, fax, or electronic mail.

RULE 4. LOCATION AND BUSINESS HOURS

(a) The Court is located at 501 Washington Avenue, Room 415, McLennan County Courthouse, Waco, Texas 76701-1327. The Courthouse is closed on some dates that this Court is open. Access to the Court on these dates may be arranged by calling the Clerk (254-757-5200).

(b) Normal business hours of the Court are Monday through Friday (other than legal holidays as that term is defined by section 662.021 of the Texas Government Code) from 8:00 a.m. to 5:00 p.m. Parties are responsible for determining if there are any changes in normal business hours.

RULE 5. FILING FEES IN CIVIL CASES

(a) The filing fee for an appeal is due contemporaneously with the filing of the notice of appeal. The filing fee for an original proceeding is due when the petition is filed.

(b) The filing fee for a motion is due when the document is filed.

(c) The Court may enforce this rule by any order that is just.

RULE 6. DOCKETING STATEMENT

Within 10 days after perfecting appeal, a "Tenth Court of Appeals Docketing Statement—Civil" or a "Tenth Court of Appeals Docketing Statement—Criminal" must be completed and returned to the Clerk. Such form will be provided by the Clerk's Office at the time the appeal is filed and also may be downloaded from the Court's website.

RULE 7. MOTIONS

(a) All motions must comply with and will be determined as provided in Rules of Appellate Procedure 9 and 10. A request for a more expeditious decision and grounds supporting same must be stated in the motion.

(b) A motion for extension of time to file an appellant's brief must state: the date the clerk's record and reporter's record were filed; the name of the party or parties requesting the extension; the length of the extension requested, up to and including a date certain; and a reasonable explanation as to why the brief cannot be tendered on time.

(c) A motion for extension of time to file an appellee's brief must state: the date the appellant's brief was filed; the name of the party or parties requesting the extension; the length of the extension requested, up to and including a date certain; and a reasonable explanation as to why the brief cannot be tendered on time.

(d) A motion requesting an extension of more than 60 days to file a brief and successive motions for extensions of time to file a brief are disfavored and will rarely be granted.

RULE 8. FAX FILING OF DOCUMENTS

(a) Pursuant to Rule of Appellate Procedure 9.2(c), the Clerk will accept for filing the following documents transmitted by fax: (1) motions to extend the time to file a notice of appeal, (2) motions to extend the time to file a brief, (3) notices changing the designation of lead counsel, (4) motions to extend the time to file a motion for rehearing, and (5) upon prior approval of the Clerk, any other document.

(b) A cover sheet must accompany every document transmitted by fax and must clearly identify (1) the name, address, telephone number, and fax number of the sender; (2) the document being transmitted; (3) the number of pages; and (4) the name of the Clerk or Deputy Clerk, if any, to whose attention the document is directed.

(c) The quality of the original must be clear and sufficiently dark to be transmitted legibly. The Clerk will not be responsible for events that disrupt, impair, or render impossible the receipt of documents transmitted by fax. The sender is obligated to ensure that documents transmitted by fax have been received legibly and completely by the Clerk. Although the Clerk's office will verify by phone that a document has been received legibly and completely, it will not initiate the phone call. If a document electronically transmitted is not complete or is otherwise illegible, the Clerk will nonetheless file it and bring it to the attention of the Court. However, incompleteness or illegibility may be grounds for striking the document.

(d) The sender must forward the original of any document transmitted by fax, the appropriate number of copies, and filing fees to the Clerk on the same day the document is transmitted by fax. If the Clerk does not receive the original, copies, or the fee within

five business days after receipt of the fax, the document will be stricken. (See the Fee Schedule attached as Appendix A).

(e) The date of successful transmission by fax will be the filing date; provided, however, that any transmission started after 5:00 p.m. shall be deemed filed on the next day the Court is open to the public.

RULE 9. ALTERNATIVE DISPUTE RESOLUTION

The Court may, under section 154.021 of the Texas Civil Practice and Remedies Code, on a party's motion or on its own initiative, refer a civil case for alternative dispute resolution.

RULE 10. RECORD ON APPEAL

(a) If the clerk's record or reporter's record is not timely filed, the Court may compel completion of the appellate record or impose sanctions on the official responsible for filing the record for failure to complete the record.

(b) Each clerk's and reporter's record in a civil case must comply with the Supreme Court's "Order Directing the Form of the Appellate Record in Civil Cases." Each clerk's and reporter's record in a criminal case must comply with the Court of Criminal Appeals' "Order Directing the Form of the Appellate Record in Criminal Cases." Each reporter's record must also comply with the Uniform Format Manual for Texas Court Reporters.

(c) In addition to the foregoing requirements, each volume of the clerk's record must contain no more than 200 pages and include at the front a detailed index of all documents included in the entire clerk's record. The index must show the date of filing of each document and the volume number and page where it first appears in the record. A clerk's record that does not comply with these requirements may be returned for revision before filing.

(d) In addition to the foregoing requirements, each volume of the reporter's record must be no more than two inches thick. Each exhibit volume must contain an exhibit index at the front that provides a complete description of each exhibit and the volume and page at which the exhibit was, if applicable, identified, offered and admitted into evidence. A reporter's record which does not comply with these requirements may be returned for revision before filing.

(e) Pending adoption of a rule by the Supreme Court of Texas and/or the Court of Criminal Appeals, at the option of the trial court clerk and reporter, respectively, a CD-ROM may be submitted *in addition to* the printed clerk's record or reporter's record, containing the same information as in the printed record, in *searchable* Portable Document Format (PDF).

RULE 11. WITHDRAWAL OF RECORD ON APPEAL

(a) Before submission in civil cases, attorneys of record may check out the record from the Clerk by completing a receipt and providing a billing account number for shipping services. The Court will not incur shipping expenses. After submission, attorneys may not check out the record except at the discretion and on the order of one of the justices of the Court. An attorney who checks out the record must return it promptly to the Clerk on demand.

(b) In criminal cases, the record cannot be checked out from this Court but may be obtained from the county or district clerk's office.

(c) A party who has checked out the record in a civil case shall not break the binding of the record or disassemble the record for copying, inspection, or any other purpose.

RULE 12. BRIEFS

(a) An original and five copies of each brief shall be filed with the Clerk. The Court prefers

that the cover of the brief of the appellant be light blue; that of the appellee (and the State as appellee in criminal cases), white or off-white; that of a reply brief, gray; and that of an intervenor or amicus curiae, green.

(b) In addition to complying with Rules of Appellate Procedure 9 and 38, proper citation form should be observed and subsequent history should be provided. In citing cases, specific page citations should be given to the pages where the relevant holdings or quotations may be found. The Court encourages citations to pertinent decisions of this Court.

(c) In addition to complying with Rules of Appellate Procedure 38.1(h) and 38.2(a), parenthetical references to the clerk's record and the reporter's record should be made to the volume and page where any referenced material is found, *e.g.*, (I C.R. at 20), (II R.R. at 150).

(d) To comply with Rule of Appellate Procedure 39.7, a request for oral argument must be noted on the front cover of the brief, *e.g.*, ORAL ARGUMENT REQUESTED. A party's failure to properly request argument shall be deemed a waiver of that party's right to argue, even if another party has requested argument.

(e) If oral argument is requested, the brief should provide a short statement about why oral argument would assist the Court.

(f) Before submission, supplemental briefs may be filed without leave of the Court if no new issues are raised. If new issues are raised, leave of the Court must be obtained before such a brief will be filed. After submission, supplemental briefs may be filed only with leave of the Court.

(g) The Court requests that written briefs on the merits filed before submission also be submitted electronically on a CD-ROM or as an email attachment addressed to ebrief.10thcoa@courts.state.tx.us. *Searchable* PDF is the preferred file format. "Information

on Submission of Electronic Briefing" concerning the preferred form and format for electronically-filed briefs is available on the Supreme Court website: www.supreme.courts.state.tx.us. Electronic filings will not be considered in determining whether a brief is timely filed under the Rules of Appellate Procedure.

RULE 13. APPENDICES

Any appendix required by Rule of Appellate Procedure 38.1(j) and which contains "necessary contents" as defined by such rule must be bound with the party's brief, if practicable. Any appendix which contains "optional contents" must be bound separately and an original and five copies filed with the Clerk. Every "necessary" and "optional" appendix must have an index and each appended document must be preceded by a numbered or lettered tab.

Rule 14. APPEALS IN HABEAS CORPUS, BAIL, AND EXTRADITION PROCEEDINGS IN CRIMINAL CASES

In appeals governed by Rule of Appellate Procedure 31.1 the appellant's brief must be filed within 20 days after the filing of the clerk's record or reporter's record, whichever is later. The State's brief must be filed within 20 days after the date the appellant's brief is filed.

RULE 15. ORAL ARGUMENT

(a) Oral arguments in cases routinely set will be heard at 9:00 o'clock a.m. on Wednesday at the McLennan County Courthouse in Waco unless the notice specifies another day, time, or place. The Court occasionally sits in other counties in the district as authorized by section 22.211(a) of the Government Code.

(b) The docket is called at the day, time, and location specified for arguments in the notice. A representative for each party scheduled for oral argument who is authorized

to argue the case must be present at docket call and announce whether the party is ready to proceed with argument. The failure to make an announcement at docket call constitutes a waiver of oral argument by that party.

(c) A party who desires to waive oral argument previously requested must promptly notify the Clerk and all opposing parties.

(d) The standard times allotted for oral argument are fifteen minutes for each side and five minutes for rebuttal. The Court may restrict the time allotted, grant additional time, or reallocate the time among the parties on its own motion.

(e) A motion to reschedule an argument or requesting additional time for oral argument should be filed at least 7 days before the case will be argued. Motions filed thereafter will be considered only in exceptional circumstances.

(f) All cases to be argued have been discussed by the Court and its legal staff in a pre-submission conference. The Court is generally familiar with the facts, and Counsel should not dwell unnecessarily on them.

(g) Authorities cited during oral argument that are not contained in the party's briefs shall be submitted to the Clerk and all opposing parties by letter-brief not later than the Friday following oral argument. The opposing party may respond to the new authority in a letter-brief filed by the following Friday.

(h) A copy of each demonstrative aid or exhibit to be used during oral argument must be provided to opposing counsel prior to docket call. If any demonstrative aid or exhibit is not conducive to reproduction then a written description of such must be provided to opposing counsel. The Court will hear an objection to a demonstrative aid, and any response thereto, immediately prior to the commencement of the argument in that case.

(i) The broadcasting, televising, recording, or photographing of any proceeding of the Court without the Court's permission is prohibited. All cellular phones, beepers, and other electronic devices must be turned off before docket call. A person who violates this rule is subject to sanctions as the Court deems appropriate.

RULE 16. ORIGINAL PROCEEDINGS

(a) The relator must file an original and five copies of the petition and, unless otherwise directed by the Court, an original and five copies of the appendix required by Rule 52.3(j).

(b) An original proceeding is submitted for decision on the date it is filed. Original proceedings may be set for argument or decided without argument. Counsel should notify the Clerk of circumstances requiring an expeditious hearing in an original proceeding.

RULE 17. BANKRUPTCY STAYS IN CIVIL CASES

The party claiming the benefits of a bankruptcy stay must file with the Clerk, every 180 days, a letter informing the Court of the status of the bankruptcy proceeding.

RULE 18. CAPTIONS OF SPECIAL TYPES OF CASES

(a) An appeal from an order granting or denying a petition for expunction filed under Chapter 55 of the Texas Code of Criminal Procedure will be captioned "Ex parte [initials of party seeking expunction]."

(b) An appeal from an order or decree under Title 1, Subtitle C, of the Texas Family Code (Dissolution of Marriage) will be captioned "In the Matter of the Marriage of _____ and _____."

(c) An appeal from an order or decree rendered under Title 5 of the Texas Family Code (Suits Affecting the Parent-Child Relationship), other than an order granting the adoption of an adult, will be captioned "In the Interest of [initials of child(ren)], (a) Child(ren)."

(d) An appeal from an order or decree under Title 3 of the Texas Family Code (the Juvenile Justice Code) will be captioned "In the Matter of [initials of child]."

RULE 19. CASES ON REMAND

After a case is remanded from the Supreme Court or the Court of Criminal Appeals, the parties are encouraged to file supplemental briefs reflecting any recent changes in the law. Briefs are due in this Court within 30 days after the date the case is remanded for further consideration.



TENTH COURT OF APPEALS

Chief Justice
Tom Gray

McLennan County Courthouse
501 Washington Avenue, Rm 415
Waco, Texas 76701-1327

Clerk
Sharri Roessler

Justices
Bill Vance
Felipe Reyna

Phone: (254) 757-5200 Fax: (254) 757-2822

November 23, 2005

Jody Hughes
Supreme Court Building
P.O. Box 12248
Austin, Texas 78701

Re: Proposed Local Rules for the Tenth Court of Appeals (Revised 11-22-05)

Dear Mr. Hughes:

The proposed Local Rules for the Tenth Court of Appeals were submitted to the Supreme Court on November 10 for review and approval. After receiving your response noting two possible conflicts between the Local Rules adopted November 8 and the Texas Rules of Appellate Procedure, the Court has amended Rules 5 and 12(a) of those Local Rules. The revised Local Rules are enclosed for review and approval by the Supreme Court. A redline of the revisions is also enclosed.

Thank you for your assistance on this matter. If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharri Roessler".

Sharri Roessler, Clerk

Enclosures

cc: Presiding Judge Keller (with encl.)
Chief Justice Gray (w/o encl.)
Justice Vance (w/o encl.)
Justice Reyna (w/o encl.)

RULE 5. FILING FEES IN CIVIL CASES

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(b) The filing fee for a motion is due when the document is filed.

(c) The Court may ~~strike a motion or dismiss an appeal for failure to pay the applicable filing fee.~~ enforce this rule by any order that is just.

RULE 12. BRIEFS

(a) An original and five copies of each brief shall be filed with the Clerk. ~~In civil cases, the Court prefers that the cover of the brief of the appellant be light blue; that of the appellee, red; (and the State as appellee in criminal cases), white or off-white; that of a reply brief, gray; and that of an intervenor or amicus curiae, green. ; that of any reply brief, gray. In criminal cases, the Court prefers that the cover of the brief of the appellant be light blue or white; and that of the State (or appellee when the State is the appellant), yellow or white.~~