

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98- 9080

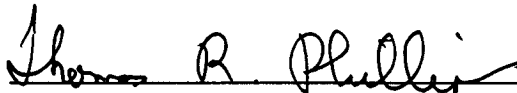
**APPROVAL OF LOCAL RULES FOR
THE TENTH COURT OF APPEALS**

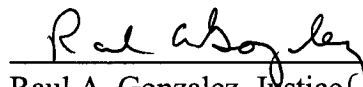
ORDERED that:

Pursuant to Rule 1.2(a) of the Texas Rules of Appellate Procedure, the Supreme Court approves the Local Rules for the Tenth Court of Appeals, Waco, Texas.

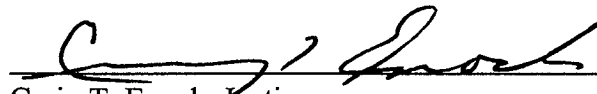
The approval of these rules is temporary, pending further orders of the Court.

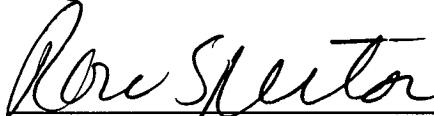
SIGNED AND ENTERED this 28th day of May, 1998.


Thomas R. Phillips, Chief Justice

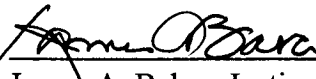

Raul A. Gonzalez, Justice

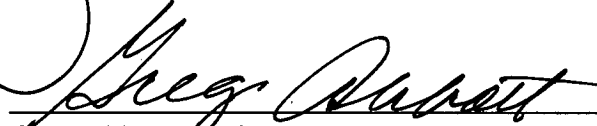

Nathan L. Hecht, Justice



Craig T. Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice



Local Rules for the Tenth Court of Appeals Waco, Texas

Effective Month xx, 1998

RULE 1. SCOPE OF LOCAL RULES

(a) These rules have been approved by the Supreme Court of Texas and apply in all cases filed 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 these local rules conflict 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. The Court may require any motion or brief not prepared in conformity with these rules to be rewritten. Failure to comply with these rules may result in the dismissal of an appeal after the Court gives the noncomplying party notice and a reasonable opportunity to cure.

RULE 2. APPEARANCE

(a) Only attorneys of record will be allowed to appear before the Court to present documents and argue cases.

(b) A party may appear *pro se* unless an attorney of record is designated.

(c) 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 judges. Therefore, parties and counsel may not communicate about a case with a judge or any member of the legal staff in person or by letter, phone, fax, or electronic mail.

RULE 4. BUSINESS HOURS

Normal business hours of the Court will be Monday through Friday (other than legal holidays as that term is defined by section 662.021 of the Texas Government Code), 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 PROVISIONS

Generally, a document is marked "received" rather than "filed" when it is defective or appears to be untimely. Any

document that does not comply with the Rules of Appellate Procedure or these local rules shall be promptly amended.

RULE 6. FILING FEES IN CIVIL CASES

(a) The filing fee for an appeal is due contemporaneously with the filing of the notice of appeal.

(b) The filing fee for all other motions or responses shall be tendered upon the filing of the document.

RULE 7. MOTIONS

(a) All motions must comply with Rules of Appellate Procedure 9 and 10.

(b) Motions for extension of time to file a 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. Provided good cause has been shown, motions requesting an extension of up to 60 days to file a brief will usually be granted. Motions requesting more than a 60-day extension and multiple motions for extensions of time to file a brief are disfavored and will rarely be granted.

(c) Under the authority granted the Court in Rule of Appellate Procedure 2, the Court will entertain appellees' motions to extend the time to file a brief.

(d) The Court generally decides motions each week without oral argument. Agreed motions and motions to extend the time for filing a brief are decided the week after filing. All other motions are decided after

the expiration of 10 days after the date of filing.

RULE 8. FAX FILING OF DOCUMENTS

(a) In accordance with 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 in emergency circumstances, any document.

(b) The sender is responsible for all applicable fees assessed by the Clerk in connection with the receipt of motions transmitted by fax. Failure to promptly pay the fee may result in the striking of the document transmitted by fax.

(c) The sender shall maintain the original of any document transmitted by fax, with the original signature affixed, as required by section 51.806 of the Government Code.

(d) A cover sheet shall accompany every document transmitted by fax and shall 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.

(e) The quality of the original shall 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, the incompleteness or illegibility of a document may be grounds for striking or denying a motion. The sender shall forward a copy of the document to the Clerk on the same day that the document is transmitted by fax.

(f) Any transmission completed after 5:00 p.m. shall be deemed filed on the next day the Court is open to the public.

RULE 9. 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 may be obtained from the Clerk's Office. The Docketing Statement must be served on all opposing parties.

RULE 10. 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 11. RECORD ON APPEAL

(a) Under Rule of Appellate Procedure 37.3(a), if the clerk's record or reporter's

record is not timely filed, the Clerk will send notice to the official responsible for filing the record stating that the record is late and requesting that it be filed within 30 days (10 days if the appeal is accelerated). If the record will not be filed within the time requested, the official responsible for filing the record shall file a written explanation with the Court within 10 days of receipt of the notice stating facts reasonably explaining why the record will not be timely filed and the official's estimate of the date when the record will be filed.

(b) 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.

(c) Each volume of the clerk's record shall contain no more than 200 pages and include a master index of all documents at the front. All documents in the clerk's record shall be on 8½ x 11 inch paper. Any clerk's record which does not comply with these requirements may be returned for revision.

(d) Each volume of the reporter's record shall comply with the Rules of Appellate Procedure and be no more than two inches thick. Any reporter's record which does not comply with these requirements may be returned for revision.

(e) If the Court determines that a delay in the filing of the record is the fault of the appellant, the appellant will be required to file a verified motion with the Court providing a reasonable explanation as to why the record has not been filed. The Court may consider a late-filed record; however, if the Court determines that the explanation is inadequate, the appellant may be subject to appropriate sanctions.

**RULE 12. 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. 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 shall return it promptly to the Clerk on demand.

(b) In criminal cases, the record must be obtained from the county or district clerk's office.

RULE 13. BRIEFS

(a) An original and five copies shall be filed with the Clerk.

(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.

(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) Before submission, supplemental briefs may be filed without permission of the Court if no new issues are raised. After submission, supplemental briefs may be filed only with permission of the Court.

RULE 14. 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. Any appendix which contains "optional contents" must be bound separately. Only one copy of an appendix containing "optional contents" will be filed by the Clerk. Each appendix shall have an index and each appended document shall be preceded by a numbered or lettered tab.

**RULE 15. APPEALS IN HABEAS
CORPUS AND BAIL PROCEEDINGS**

Rule of Appellate Procedure 31.1 requires the Clerk to set for submission an appeal from a habeas corpus or bail proceeding upon receipt of the record. The appellant's brief is due 20 days after the filing of the clerk's record or reporter's record, whichever is later. The State's brief is due 20 days after the date of the filing of the appellant's brief.

RULE 16. ORAL ARGUMENT

(a) Oral arguments in cases routinely set are heard on Wednesday mornings. The Court usually sits at the McLennan County Courthouse in Waco, but occasionally sits in the county seats of other counties in the district as authorized by section 22.211(a) of the Government Code.

(b) All attorneys scheduled for oral argument must be present in the courtroom at 9:00 a.m. for the call of the docket. The failure to appear on time will constitute a waiver of oral argument by that party.

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

(d) Oral argument will be limited to fifteen minutes per side and five minutes for the appealing party's rebuttal. By a pre-submission oral or written motion granted by the Court, additional time for oral argument may be allowed.

(e) All causes 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.

(f) Authorities cited during oral argument that are not contained in the briefs shall be submitted to the Clerk and all opposing parties by letter-brief not later than the Friday following oral argument. Response to any such letter-brief must be filed not later than the next Friday.

(g) Copies of all demonstrative aids or exhibits 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.

(h) The Court strictly prohibits the broadcasting, televising, recording, or photographing of any courtroom proceeding. Any person who violates this rule is subject to sanctions as the Court deems appropriate.

RULE 17. ORIGINAL PROCEEDINGS

(a) In addition to complying with Rule of Appellate Procedure 52, all petitions requesting extraordinary relief must also comply with Rule 13 of these local rules, including the filing of the original and five copies of the petition.

(b) Only one copy of the appendix required by Rule 52.3(j) need be filed unless otherwise directed by the Court.

(c) Hearings and arguments in original proceedings are set expeditiously.

RULE 18. BANKRUPTCY AND OTHER STAYS IN CIVIL CASES

Any party may file a notice of bankruptcy or otherwise claim an automatic stay of the appeal as provided by federal or state law. The party who files such a notice must also file with the Clerk, every 90 days, a letter informing the Court of the status of the bankruptcy or other proceeding.

RULE 19. 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 shall be captioned "Ex parte [initials of party seeking expunction]."

(b) 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, shall be captioned "In the Interest of [initials of child(ren)], (a) Child(ren)."

RULE 20. CASES ON REMAND

After a case is remanded from the Supreme Court or the Court of Criminal Appeals, the parties should consider filing supplemental briefs in light of 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

Rex D. Davis

Clerk

Imogene Allen

Justices

Bobby L. Cummings

Bill Vance

March 30, 1998

Mr. Robert Pemberton
Staff Attorney
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Re: Proposed Local Rules for the Tenth Court of Appeals

Dear Mr. Pemberton:

In light of the recent changes to the Texas Rules of Appellate Procedure, we have amended and updated the local rules for the Tenth Court of Appeals. I am enclosing a copy of our proposed local rules for review and approval by the Supreme Court.

Sincerely,

A handwritten signature in cursive script that reads "Rex D. Davis".

Rex D. Davis
Chief Justice

RDD:so

Enclosure



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
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EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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NATHAN L. HECHT
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

May 28, 1998

Chief Justice Rex Davis
Tenth Court of Appeals
Post Office Box 1606
Waco, Texas 76703-1606

Dear Justice Davis,

Please find enclosed, a copy of the order of the Supreme Court that approved local rules for your Court.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Ms. Imogene Allen
Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict
Office of Court Admin

State Law Library