

***ANDERS* GUIDELINES**

Section I addresses the requirements for *Anders* briefs submitted in guilty plea cases.

Section II addresses the requirements for *Anders* briefs submitted in a jury or bench trial.

Section III addresses the requirements for *Anders* briefs submitted in cases involving the revocation of community supervision or adjudication of guilt.

Section IV addresses the requirements for notifying your client of his/her right to access the appellate record.

SECTION I

***Anders* Briefs in Guilty Plea Cases**

If you plan to file an *Anders* brief and supporting motion to withdraw in a guilty plea case, please take note of the following information. To assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967), the *Anders* brief in support of a motion to withdraw in a guilty plea case ordinarily must contain a discussion of whether the defendant was properly admonished pursuant to article 26.13 of the Texas Code of Criminal Procedure, and whether arguable error was committed during the punishment phase. As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required. See the briefing checklist for a complete list of requirements. The *Anders* guidelines do not replace but rather supplement these requirements.

Compliant *Anders* briefs:

- (1) examine the trial court's compliance with Texas Code of Criminal Procedure article 26.13;
- (2) examine whether appellant was mentally competent when the court accepted his plea;
- (3) examine whether appellant's plea was free and voluntarily made;
- (4) examine the adequacy of the sentence; and
- (5) discuss whether any issue of ineffective assistance of counsel may be raised.

SECTION II

***Anders* Briefs in Jury and Bench Trial Cases**

If you plan to file an *Anders* brief and supporting motion to withdraw in a jury or bench trial case, please take note of the following information. To assure and demonstrate compliance with the holdings of *Anders v. California*, 386 U.S. 738 (1967), *High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978), and *Stafford v. State*, 813 S.W.2d 503, 512 (Tex. Crim. App. 1991), the *Anders* brief in support of a motion to withdraw must contain, at a minimum, a discussion of the items listed below. You are encouraged to include these items in the Table of Contents, which will assist the court in conducting its examination of the record. As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required. For a complete list of requirements, see the briefing checklist. If there are any issues unique to the case not covered by the items listed below, those should be discussed as well. These guidelines do not replace but rather supplement these briefing requirements.

The items to be included, at a minimum, are:

- (1) Sufficiency of the indictment;
- (2) Any adverse pretrial rulings affecting the course of the trial (e.g., motions to suppress, motions in limine, motions to quash, speedy trial motion);
- (3) any adverse rulings during trial on objections or motions (e.g., objections regarding the admission or exclusion of evidence, objections premised on prosecutorial or judicial misconduct, mistrial motions);
- (4) any adverse rulings on post-trial motions(e.g., motion for a new trial or post-judgment verdict of acquittal);
- (5) jury selection [N/A in bench trial];
- (6) jury instructions [N/A in bench trial];
- (7) sufficiency of the evidence, which would include a recitation of the elements of the offense(s), and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) any errors for which there were no objections but may rise to the level of fundamental error;
- (9) calculation of the sentence and the reasonableness of the sentence imposed;
and
- (10) discuss whether an issue of ineffective assistance of counsel may be raised.

Section III

***Anders* Briefs in Revocation/Adjudication Cases**

If you plan to file an *Anders* brief and supporting motion to withdraw in a case where community supervision was revoked or an individual placed on deferred adjudication was adjudicated guilty, please take note of the following information. To assure and demonstrate compliance with *Anders v. California*, 386 U.S. 738 (1967), the *Anders* brief in support of a motion to withdraw in a revocation or adjudication case ordinarily must contain a discussion of the basis for the revocation/adjudication, the notice given, the voluntariness of any plea of true entered, the sufficiency of the State's proof of the allegations, the trial court's exercise of its discretion, and the propriety of the punishment. As with any brief, compliance with Texas Rule of Appellate Procedure 38 is required. See the briefing checklist for a complete list of requirements. The *Anders* guidelines do not replace but rather supplement these requirements.

Compliant *Anders* briefs address:

- (1) the charging instrument;
- (2) appeals from community supervision in general and any limitations on appeal;
- (3) whether the appellant receive adequate notice of the alleged violations sufficient to satisfy due process;
- (4) the voluntariness of the appellant's plea and the effect of any plea of true, if applicable;
- (5) sufficiency of the State's evidence of the alleged violations;
- (6) whether the trial court abused its discretion in revoking community supervision or adjudicating the appellant guilty;
- (7) the accuracy and legality of the judgment and punishment assessed;
- (8) whether any issue may be raised regarding ineffective assistance of counsel.

Section IV Pro Se Access to the Appellate Record

To comply with this Court's *Anders* procedure, you must send your client a notification letter, a copy of the motion to withdraw, and a copy of the *Anders* brief. If the record is short, the best practice is to transmit a paper copy of the record with the notification letter, motion, and brief. If you do not provide the client with a copy of the record, you must also send the client a form motion for access to the appellate record. The form motion should be addressed to the Court and should be complete, lacking only the client's signature and date.

The notification letter must: (1) notify the client that you have filed a motion to withdraw supported by an *Anders* brief; (2) inform the client of their right to review the record and file a pro se response; (3) if the record is not being provided, inform the client that if the client desires to review the record and file a pro se response, the client should immediately file the enclosed motion for pro se access with the court of appeals; and (4) inform the client of their right to seek discretionary review should this Court declare the client's appeal frivolous. *See generally Kelly v. State*, 436 S.W.3d 313 (Tex. Crim. App. 2014).

The notification letter, motion to withdraw, and *Anders* brief should be filed with the Court. The notification letter and motion to withdraw must reflect either that counsel has provided a copy of the record to the appellant or that counsel has provided the appellant with a form motion to request access to the appellate record and instructions for sending the motion to the Court.

An example of a form motion is below.

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Return to:

Fifth District Court of Appeals
600 Commerce Street, Second Floor
Dallas, TX 75202

Cause No. 05-__ - _____-CR

_____ , Appellant	§	IN THE COURT OF APPEALS
	§	
V.	§	FIFTH DISTRICT OF TEXAS
	§	
THE STATE OF TEXAS, Appellee	§	AT DALLAS

Pro se Motion for Access to the Appellate Record

To the Honorable Justices of the Court of Appeals:

COMES NOW, _____, appellant in the above-described cause, and files this pro se motion seeking access to the appellate record. Appellant's appointed counsel has filed a motion to withdraw and supporting brief pursuant to *Anders v. California*, 386 U.S. 738 (1967).

Appellant, desires to file a pro response and moves this court to provide appellant access to the appellate record including the clerk's record and the court reporter's record.

Appellant requests an extension of time of 30 days from the date appellant receives the appellate record to file a pro se response to counsel's *Anders* brief.

Respectfully submitted,

Pro se Appellant
[Client's Address]