

*In 2004, the Appellate Section of the State Bar of Texas and the Fifth Court of Appeals worked together to identify key information needed 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. The Appellate Section and the court updated the information in March 2007. Hereafter, the court intends to keep the information updated for the use of persons with matters before the court.*

## **Internal Operating Procedures – January 31, 2010**

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### **The Basics**

- 1. Court's Address:**  
5th District Court of Appeals  
600 Commerce Street, Suite 200  
Dallas, TX  
75202
- 2. Telephone number:**  
214-712-3400  
214-745-1083 (fax)
- 3. Website address:**  
<http://www.5thcoa.courts.state.tx.us>
- 4. Names of Justices:**  
Carolyn Wright (C.J.), Joseph B. Morris, Jim Moseley, David Bridges, Michael J. O'Neill, Kerry P. Fitzgerald, Martin E. Richter, Molly Francis, Douglas S. Lang, Elizabeth Lang-Miers, Mary Murphy, Robert Fillmore, and Lana Myers
- 5. Chief Staff Attorney:** Marilyn Houghtalin  
**Deputy Chief Staff Attorney:** Cliffie Wesson
- 6. Chief Clerk:** Lisa Matz
- 7. Local Rules:** The court's local rules are available on its website. The court also has internal guidelines that are not publicly available.

**The Ins and Outs**

<b>PROCEDURE</b>	<b>WHAT AND HOW TO FILE</b>	<b>HOW HANDLED</b>	<b>COURT'S PARTICULAR PRACTICES</b>	<b>SPECIAL NOTES</b>
<b>Motions</b>	Original plus 2	Chief Justice appoints a motions panel that sits for a year. First motion for extension of time is granted by the clerk if filed before the expiration of the deadline and requests not more than 30 days. Second motions for extension are rarely granted, and subsequent motions only in extraordinary circumstances.	The motions panel is reconstituted yearly. The court follows the TRAPs with respect to deciding motions.	No particular day for deciding motions.
<b>Briefs</b>	Rules require an original plus 7. Deadlines follow the TRAPs.		Court follows TRAP rules on briefs.	A motion for leave must accompany any late brief or any brief other than an appellant's brief, an appellee's brief or a reply brief.
<b>Case Assignment</b>		The court follows an internal rotation schedule for assigning cases. Panels are reconstituted every 9 weeks.	The panel has a formal conference and vote immediately following argument or submission. Panels rarely but occasionally meet informally before argument or submission but do not vote at that time.	The court has never heard a case <i>en banc</i> at the outset. Fewer than 5% of cases are heard <i>en banc</i> . On occasion, the court has decided to sit <i>en banc</i> without being requested to do so by the parties.
<b>Oral Argument</b>	Follow the TRAPs in requesting oral argument	Court typically allows 20 minutes per side, plus an additional 5 minutes for the appellant's rebuttal. Court allows more time only in extraordinary circumstances and only in response to a written motion. Clerks and staff attorneys rarely participate in conferences and do not prepare memos for the conferences.	The court does not automatically grant requests for argument. The court makes this decision on a case-by-case basis. Parties find out who is on their panel in a submission notice sent 60 days before the argument.	If only one side requests argument in its brief and the court grants it, the party that did not previously request argument should do so if it wants to argue.

**The Ins and Outs (continued)**

<b>PROCEDURE</b>	<b>WHAT AND HOW TO FILE</b>	<b>HOW HANDLED</b>	<b>COURT'S PARTICULAR PRACTICES</b>	<b>SPECIAL NOTES</b>
<b>Voting</b>			Voting occurs at the formal conference following argument or submission.	
<b>Opinions</b>		Author is usually assigned at the formal conference after submission and is chosen by an internal rotation schedule. The panel decides on a case-by-case basis whether to circulate opinions to the entire court. Court does not have internal guidelines concerning deadlines for drafting and circulating opinions.	Court does not release opinions on a particular day.	
<b>Motions for Rehearing</b>	Original plus 2	Motions for rehearing (and en banc) are initially circulated to author; author makes recommendation; then it is circulated to other members of the panel. The court has sometimes granted rehearing w/o request under TRAP 50.		
<b>Original Proceedings</b>	The rules require an original plus 3, but the court would prefer to get an original plus 4 copies.	There is an original proceedings panel that changes monthly pursuant to an internal rotation schedule.	Original proceedings are reviewed immediately, whether or not they request emergency relief.	Original proceedings are set for oral argument only in extraordinary circumstances. Local Rule 9 requires that Relator note on the cover of the petition if temporary relief is requested.

### **Technology**

1. Court has both Westlaw and Lexis.
2. Court has no preference with respect to United States Supreme Court cites.
3. The Fifth Court of Appeals now requires that an exact copy of the brief also be filed on a CD or by e-mail attachment. Briefs submitted by amicus curiae must also be in this format  
<http://5thcoa.courts.state.tx.us/ebrief/index.html>
4. The court prefers that parties provide copies of out of state cases.
5. Local Rule 3 provides procedures for fax filing.
6. The court does not accept electronic filings.
7. The court distributes opinions electronically via its website.
8. The court records oral argument and can make them available to the parties.

### **Appellate Mediation**

1. The court has a program for appellate mediation.
2. Parties have to complete ADR section of docketing statement.
3. The chief staff attorney and the Justices oversee the mediation program.
4. If someone needs to contact the court about mediation, they must go through the clerk.
5. The court encourages parties to select their own mediator, but will assign mediators based on a roster maintained by the court.

### **Fees**

1. Appeal: \$175
2. Original Proceeding: \$125
3. Motions: \$10
4. Motions for Rehearing: \$15
5. Response to Motion: None
6. Exhibits tendered for oral argument: \$25

### **Miscellaneous**

1. There is no special provision for after-hours filing, but a party could fax a brief to the court by 5 p.m., then file in hard copy within 7 days, pursuant to Local Rule 3.
2. The court uses visiting Justices Sue Lagarde, Francis Maloney, and Chief Justice Thomas.
3. A substantial percentage of the court's opinions are memorandum opinions.