



**COURT OF APPEALS**  
SECOND DISTRICT OF TEXAS

CHIEF JUSTICE  
JOHN CAYCE

JUSTICES  
TERRIE LIVINGSTON  
LEE ANN DAUPHINOT  
ANNE GARDNER  
SUE WALKER  
BOB McCOY  
BILL MEIER

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

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CLERK  
DEBRA SPISAK

CHIEF DEPUTY CLERK  
MEAGAN POLK

CHIEF STAFF ATTORNEY  
LAUREN CHADWICK

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 July 2009 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)**

**July 2009**

**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>
4. Names of Justices: Chief – John Cayce (C.J.), Terrie Livingston, Lee Ann Dauphinot, Anne Gardner, Sue Walker, Bob McCoy, and Bill Meier.
5. Chief Staff Attorney: Lauren Chadwick
6. Chief Clerk: Debra Spisak
7. Local Rules: The court has published written local rules and unpublished written internal operating procedures.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  |
|----------------|---|---|---|--|
| <b>Motions</b> | Original only, no copies.<br><br>Certificate of conference required on all motions, except motions for rehearing.<br><br>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.<br>After a panel is assigned to a case, all motions pertaining to the case generally are submitted to the panel.<br><br>Some first motions for extension of time to file briefs are handled by the clerks. First | 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.<br><br>Both pre-submission motion panels and appeal panels are set in the spring for the following fiscal year. Motion panels change every 6 weeks; the motion justice who decides single justice motions changes every 6 weeks. | All motions are considered and decided any day of the week. Rulings on motions for rehearing are announced on Thursdays.<br><br>All motions for extensions of time in criminal cases must state whether the appellant is incarcerated. |

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|-----------------|-------------------------|---|--|--|
|                 |                         | <p>motions for extension of time are liberally granted for cause depending upon the amount of time requested. Second motions – depends upon the circumstances of the case. Subsequent motions – Looked upon with disfavor.</p>  |  |  |
| Briefs          | Original plus 4 copies. | <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. Local Rule ("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).</p> <p><u>REPLY BRIEFS:</u><br/><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, appellant's reply to appellee's 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 is filed. TRAP 52.5; LR 2(B).</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).</p> <p>Letter briefs must be double-spaced and no longer than 2 pages. LR 1(D).</p> <p>Aggregate number of pages of all briefs filed by a party cannot exceed 90 pages. LR 1(G).</p> <p>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 red; intervenor's or amicus' brief green; and any reply brief gray. LR 1(A)(8).</p> <p>In criminal cases, appellant's brief should be light blue or white; State's or appellee's (when State is appellant) brief yellow or white. LR 1(A)(8).</p> <p>The Court asks, but does not require, that briefs filed be accompanied by an electronic copy of the brief. LR 1(K).</p> |
| 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  | Judges occasionally meet before argument/submission; always after argument/submission; and occasionally both before  | 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  |

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|---------------|---|--|--|---|
|               |   | compositions of panels. Judges are reassigned every 6 weeks.   | and after argument/submission. If neither party requests oral argument, the opinion may be drafted prior to conference.  | 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; 5 minute rebuttal for appellant/relator.<br><br>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 panel decides whether to grant oral argument. If ordered submitted w/o argument, an objection by a party requesting argument may be sustained.<br><br><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 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 they intend to draft a concurrence or dissent. The panel | Author is chosen on a random basis by the Clerk of Court.<br><br>For appeals, the author is assigned approximately 2 weeks before submission. In original proceedings, the author is assigned when the proceeding is filed.<br><br>If neither party requests oral argument, the opinion  | Court releases its opinions on Thursdays. Opinions in original proceedings can be handed down on any day. The proposed opinion (including concurrences and dissents) is circulated to the panel first; then the entire court. |

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|                       |  | member then has 60 days to circulate the draft of a concurrence or dissent. Then, additional time is allowed for subsequent drafts of opinions.   | may be drafted prior to conference.  |   |
| Motions for Rehearing | Original only.<br><br>No certificate of conference is required.  | 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 <i>sua sponte</i> .   |  | Motions for rehearing en banc are initially circulated to the author first, then panel, then entire court. Author makes a recommendation. Court has sometimes decided to sit <i>en banc</i> w/o request, but very rarely. |
| Original Proceedings  | Original plus 4 copies of all documents, including appendices. Only the original of a reporter's record need be filed. LR 2. | 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.<br><br>If a motion requests emergency relief, it is circulated immediately and dealt with ASAP. If there is no motion for emergency relief, it is addressed as soon as possible within the normal course of business. | Granting emergency relief requires 2 out of 3 panel judges. In extremely rare circumstances, a single judge may grant—but not deny—emergency relief. | Oral argument requires a vote of 2 out of 3 of the panel judges.<br><br>Original proceedings panels change every 6 weeks.   |

## Technology

1. Court subscribes to Westlaw.
2. Court prefers citations from both U.S. and S.Ct., unless *cert. denied*, then it only cites the U.S.
3. Court may receive CD-Rom 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. Court does not accept electronic filings.
6. Court does not distribute its orders electronically.
7. Court records oral argument 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 that statute.

## **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.
4. If someone needs to contact the court about mediation, they must go through the clerk.
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 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).
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*.