

Anders Guidelines

Section I details *Anders* briefs submitted in cases with a guilty plea.

Section II details *Anders* briefs submitted in a jury or bench trial.

Section III details additional responsibilities of an *Anders* attorney.

Section IV details an *Anders* appellant's right to access the appellate record.

SECTION I

***Anders* Brief in Guilty Plea Cases**

If appointed counsel intends to file an *Anders* brief in a guilty plea case, counsel must comply with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). In addition to complying with Rule 38 of the Texas Rules of Appellate Procedure, an *Anders* brief must address:

- (1) Whether appellant was properly admonished pursuant to article 26.13 of the Texas Code of Criminal Procedure;
- (2) Whether appellant was mentally competent when the court accepted his plea;
- (3) Whether appellant's plea was free and voluntarily made; and
- (4) The adequacy of the sentence and whether arguable error was committed during the punishment phase.

SECTION II

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

If appointed counsel intends to file an *Anders* brief and supporting motion to withdraw in a jury or bench trial case, counsel must comply with *Anders*, 386 U.S. 738, 87 S. Ct. 1396, *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). In addition to complying with Rule 38 of the Texas Rules of Appellate Procedure, an *Anders* brief must address, at a minimum:

- (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, and speedy trial motions);
- (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, and mistrial motions);
- (4) Any adverse rulings on post-trial motions (e.g., motion for 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. Include the elements of the offense(s) and facts and evidence adduced at trial relevant to the offense(s) of conviction;
- (8) Any errors that may rise to the level of fundamental error which were not objected to;
- (9) The punishment range of the offense(s) and the reasonableness of the sentence(s) imposed.

SECTION III

Additional Responsibilities of *Anders* Attorney

The appointed attorney who files an *Anders* brief must file a motion to withdraw in compliance with Rule 6.5 of the Texas Rules of Appellate Procedure and also send a letter to appellant to:

- (1) Notify appellant of the motion to withdraw and the *Anders* brief along with providing a copy of each to appellant;
- (2) Inform appellant of his right to file a *pro se* response and of his right to review the record before filing such response; and

- (3) Inform appellant of his *pro se* right to seek discretionary review if the court of appeals declares the appeal frivolous.

See Kelly v. State, 436 S.W.3d 313 (Tex. Crim. App. 2014).

The appointed attorney must also notify this Court, in writing, that he has:

- (1) Informed appellant of the motion to withdraw and attendant *Anders* brief;
- (2) Provided appellant with the requisite copies while notifying him of his various *pro se* rights; and
- (3) Supplied appellant with a form motion for *pro se* access to the appellate record to be filed within ten days

An example of the form motion to provide to this Court:

NO. 01-____-____-CR

_____	§	COURT OF APPEALS
v.	§	1ST DISTRICT
The State of Texas	§	HOUSTON, TEXAS

CERTIFICATE OF COUNSEL

In compliance with the requirements of *Anders v. California*, 386 U.S. 378, 87 S. Ct. 1396 (1967), I, [**Name of attorney**], court-appointed counsel for appellant, [**name of appellant**], in the above-referenced appeal, do hereby verify, in writing, to the Court that I have:

1. Notified appellant that I filed a motion to withdraw as counsel with an accompanying *Anders* brief, and provided a copy of each to appellant;
2. Informed appellant of his right to file a *pro se* response identifying what he believes to be meritorious grounds to be raised in his appeal, should he so desire;

3. Advised appellant of his right to review the appellate record, should he wish to do so, before filing that response;
4. Explained the process for obtaining the appellate record, provided a *Motion for Pro Se Access to the Appellate Record* lacking only appellant's signature and the date, and provided the mailing address for this Court; and
5. Informed appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous.

Respectfully submitted,

Attorney for Appellant

SECTION IV

Pro Se Access to the Appellate Record

To comply with *Anders*, appointed counsel must notify appellant of his right to access the appellate record and provide him with a form motion for *pro se* access to the appellate record. *See Kelly*, 436 S.W.3d at 319–20. An example of the form motion to provide appellant:

NO. 01-__-____-CR

_____	§	COURT OF APPEALS
v.	§	1ST DISTRICT
The State of Texas	§	HOUSTON, TEXAS

Pro se Motion for Access to Appellate Record

To the Honorable Justices of Said Court:

On _____[attorney to fill in date], appellant’s appointed counsel filed a brief in the above styled and numbered cause pursuant to *Anders v. California*, 386 U.S. 738 (1967).

_____, appellant, moves this Court to provide him/her access to a copy of 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 he/she receives the appellate record to file a pro se response to counsel’s *Anders* brief.

Respectfully submitted,

Pro se Appellant