

ANDERS GUIDELINES – PARENTAL TERMINATION CASES

Section I addresses the requirements for *Anders* briefs submitted in parental termination cases.

Section II addresses the filing of a motion to withdraw.

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

SECTION I

***Anders* Briefs in Parental Termination Cases**

The *Anders* procedures are applicable to an appeal from the termination of parental rights when an appointed attorney concludes that there are no non-frivolous issues to assert on appeal. *In re D.E.S.*, 135 S.W.3d 326, 329 (Tex. App.—Houston [14th Dist.] 2004, no pet.). If you plan to file an *Anders* brief, please take note of the following information. To assure and demonstrate compliance with *Anders*, the brief 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.

Compliant *Anders* briefs include, at a minimum:

- (1) demonstration of the trial court's jurisdiction pursuant to Tex. Fam. Code § 263.401(a);
- (2) any adverse pretrial rulings affecting the course of the trial;
- (3) any adverse rulings during trial on objections or motions;
- (4) any adverse rulings on post-trial motions;
- (5) jury selection, if applicable;
- (6) jury instructions, if applicable;

(7) sufficiency of the evidence to support the trial court’s findings under section 161.001(b)(1) (“predicate grounds”);

(8) sufficiency of the evidence to support a trial court’s finding under section 161.001(b)(1)(D) or (E) (“endangerment”), even when another ground is sufficient, because of the potential consequences for parental rights to a different child per *Interest of N.G.*, 577 S.W.3d 230, 235 (Tex. 2019);

(9) sufficiency of the evidence to support the trial court’s findings under section 161.001(b)(2) (“best interest”);

(10) any errors for which there were no objections but may rise to the level of fundamental error; and

Section II

Motion to Withdraw

The Supreme Court of Texas has concluded that the right to counsel under Family Code section 107.013(a)(1) through the exhaustion of appeals under Family Code section 107.016(2)(B) encompasses all proceedings in the Supreme Court of Texas, including the filing of a petition for review. *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam). Once appointed by the trial court, counsel should be permitted to withdraw only for good cause and on appropriate terms and conditions. *Id.* Counsel’s belief that the client has no grounds to seek further review from the court of appeals’ decision does not constitute good cause. *Id.* A motion to withdraw in this court on that basis, in the absence of additional grounds for withdrawal, may be premature. *Id.* Accordingly, it is not required that your *Anders* brief be accompanied by a motion to withdraw.

Section III

Pro Se Access to the Appellate Record

To comply with *Anders*, you are required you to notify your client of his/her right to access the appellate record and provide him/her with a form motion for pro se access to the appellate record.

You must provide the court with a transmittal letter in which you notify your client of his/her right to access the appellate record and provide him/her with a form motion for pro se access to the appellate record. An example of a form motion and transmittal letter are below.

Return to:

Fourteenth Court of Appeals
301 Fannin, Room 245
Houston, TX 77002

NO. 14-__-____-CV

_____ § COURT OF APPEALS
v. § 14TH DISTRICT
Texas Department of Family and Protective Services 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 appellant 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 appellant receives the appellate record to file a pro se response to counsel's *Anders* brief.

Respectfully submitted,

Pro se Appellant

[Appellant's name]
[Address]
[City, State ZIP]

RE: Cause no. 14-__ - ____-CV
[Appellant] v. Texas Department of Family and Protective Services

Dear [appellant]:

Enclosed please find a copy of the brief I filed with the Court of Appeals in your case. After a diligent search of both the record in your case and the applicable law, I could not find anything that would constitute reversible error.

As the *Anders* brief reflects, the law accords you the right to review the record of your trial and file any brief that you deem necessary on your own behalf. You can obtain a copy of the record by filling out the enclosed motion and mailing to the Mr. Christopher A. Prine, Clerk, Fourteenth Court of Appeals, 301 Fannin, Room 245, Houston, TX 77002.

After receiving the appellate record you will have 20 days to file a brief with the court of appeals. One additional copy of the brief should be mailed to [Opposing Counsel, Address].

In the event the court of appeals affirms the trial court's order, the next step of the process, if you wish to pursue it, is a petition for discretionary review to the Supreme Court of Texas.

Sincerely,