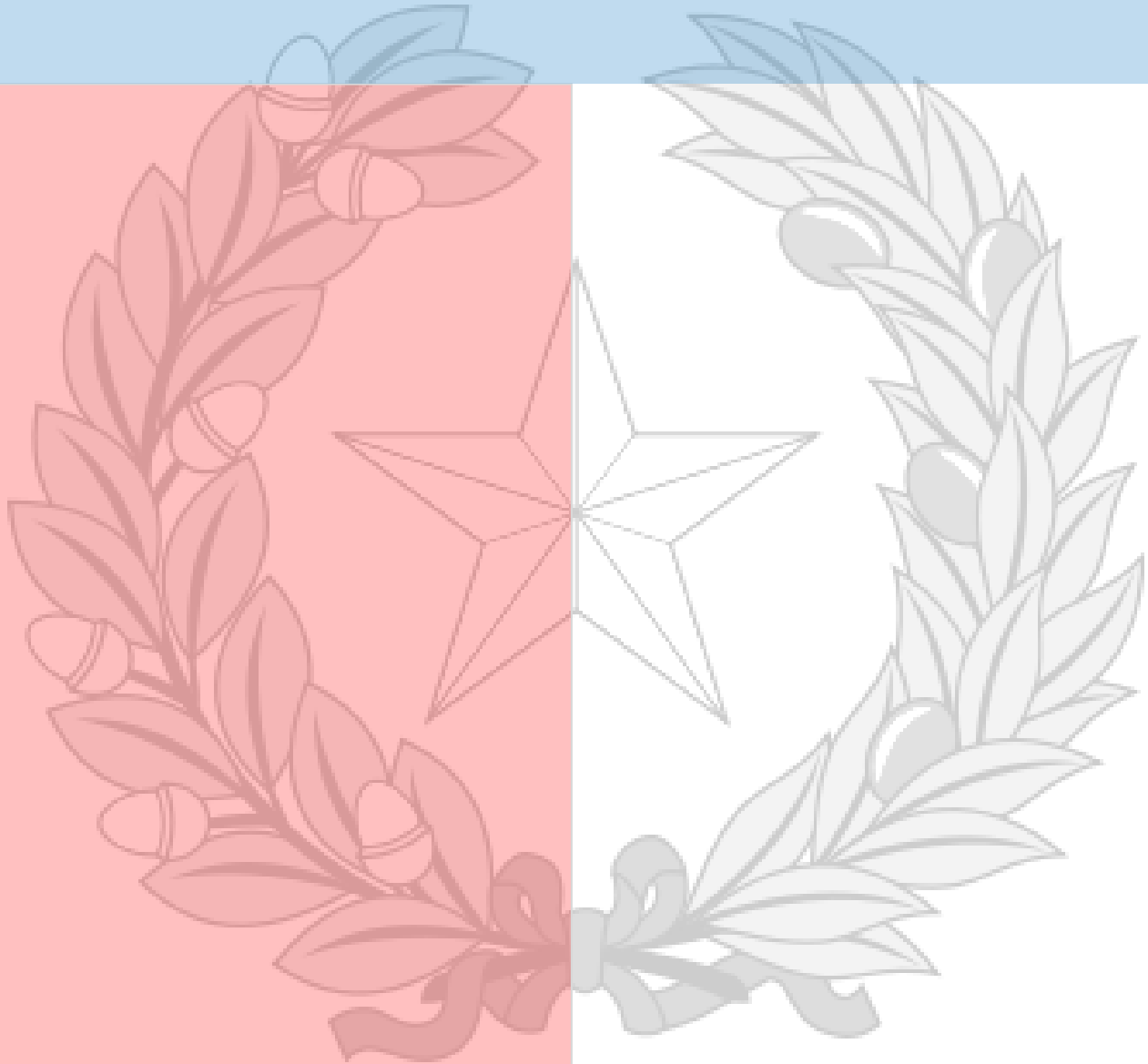


# TEXAS YOUNG LAWYERS ASSOCIATION

## PRO SE LITIGANT GUIDE





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## INTRODUCTION

An appeal is a request for a higher court to review a lower court's decision. You may wish to file an appeal if you have lost your case in the trial court. You may also find yourself involved in appellate proceedings if an opposing party seeks to overturn your victory in the trial court. Legal appellate work is complicated. We strongly advise you to hire or consult a licensed attorney if you can afford one. If you cannot afford an attorney, and you are not entitled to court-appointed counsel, then you may choose to proceed *pro se*.



### Pro Se

Latin for "for yourself." This party appears before the court without legal counsel



### Texas Rules of Appellate Procedure

The guidelines and rules governing the appellate process

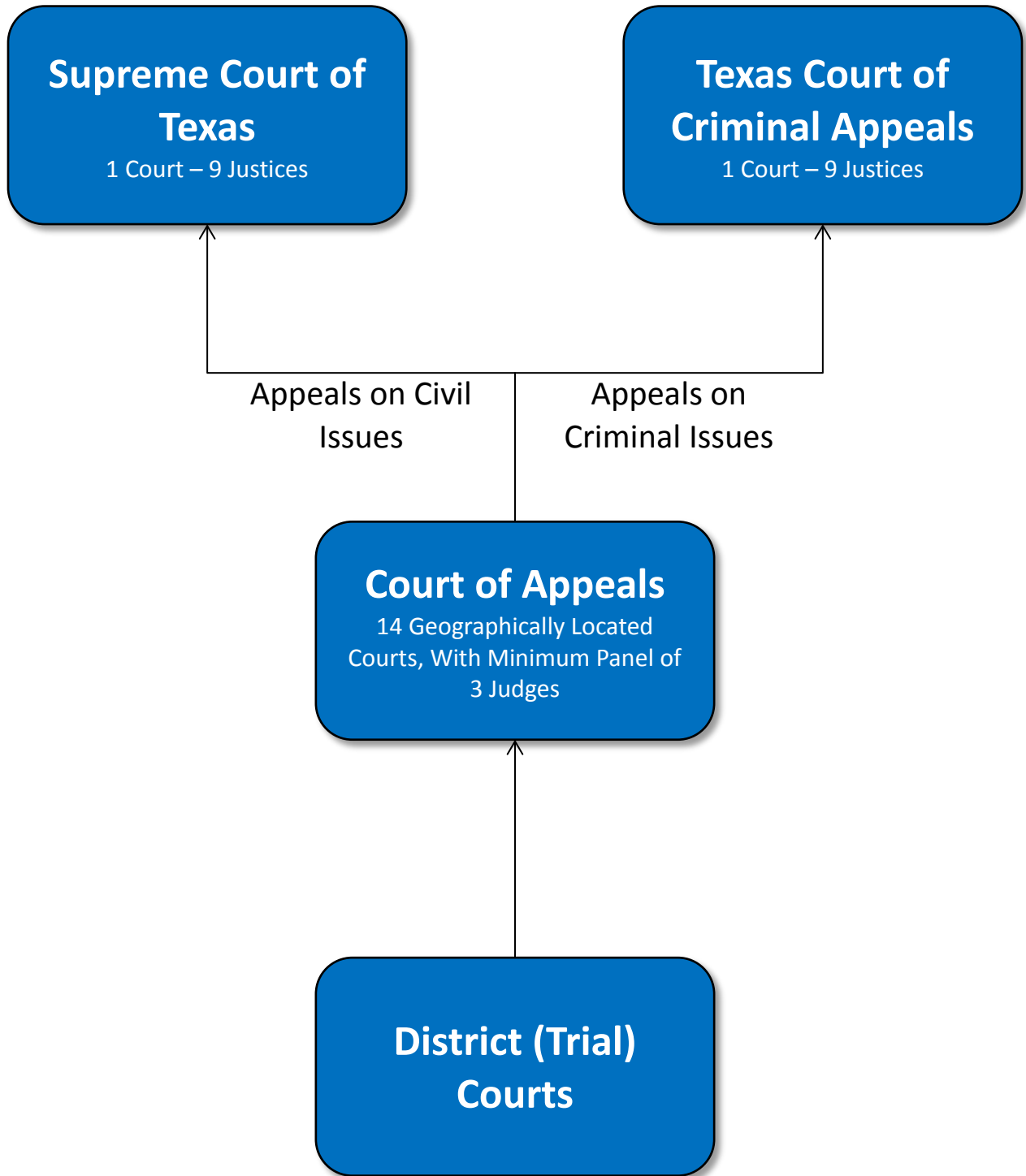
Everyone has the right to represent themselves in a Texas court. But, be aware that *pro se* litigants are held to the same standards as licensed attorneys and are required to follow the

Texas Rules of Appellate Procedure (TRAP). *Pro se* representation carries many risks. Failure to follow the rules can result in fines, sanctions, or the dismissal of the case. Review the rules here: <http://www.supreme.courts.state.tx.us/rules/traphome.asp>.

The Texas Young Lawyers Association Pro Se Appellate Guide is designed to educate *pro se* litigants about appellate procedure and help them through the appellate process. Do **not** assume that all the requirements of an appeal are set out in this guide. This guide is only a general overview of appellate procedure, and in no way stands in place of the Texas Rules of Appellate Procedure or legal representation.

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# TEXAS COURT SYSTEM



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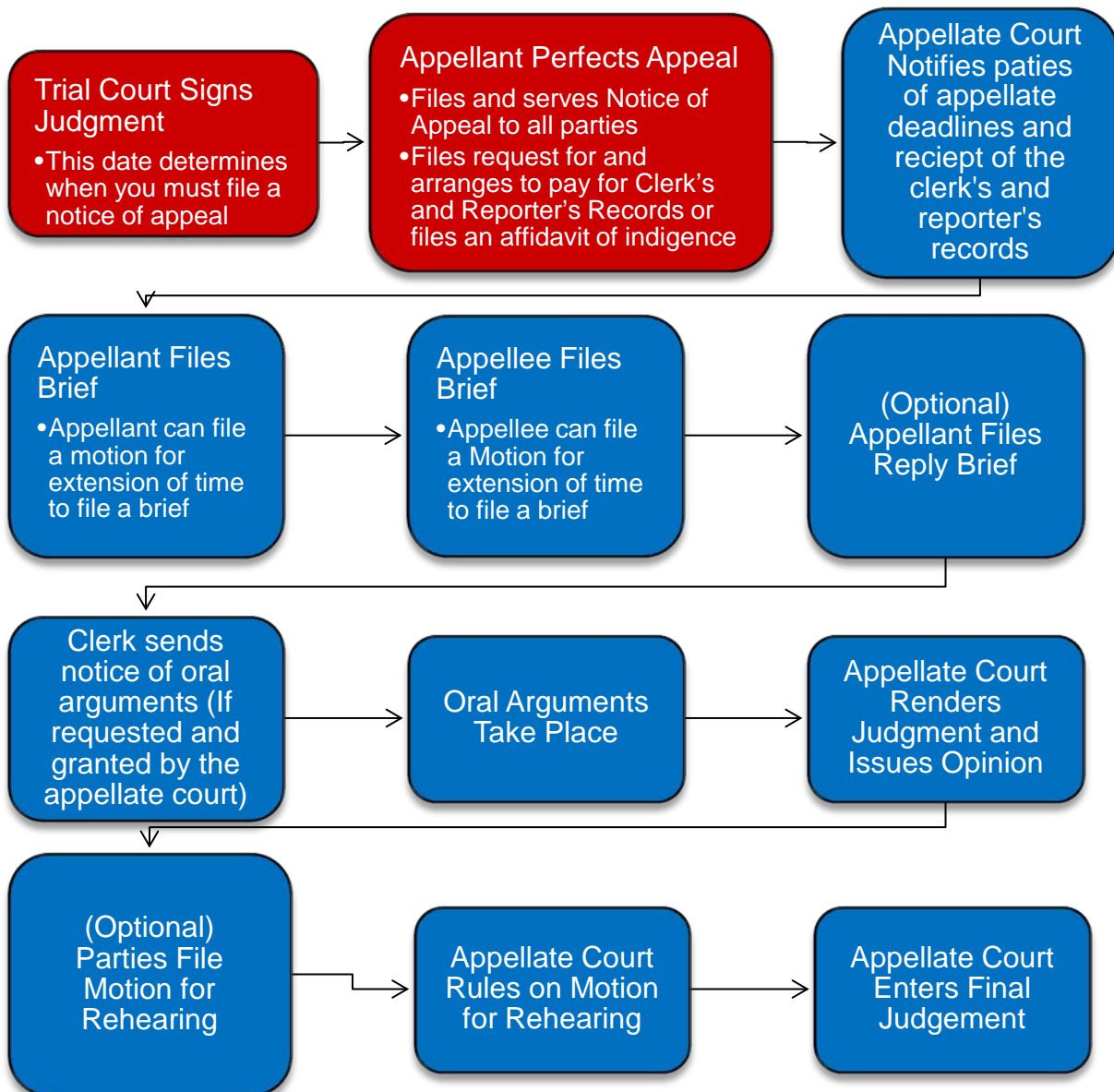
# THE COURTS OF APPEAL

The fourteen Courts of Appeals have jurisdiction over civil and criminal appeals. Each Court of Appeals has jurisdiction in a specific geographical region of the State. If you are filing the appeal, make sure it is brought in the appellate court having jurisdiction over the region that the trial court sits in by contacting the appellate clerk.

Appellate District	Website	Clerk's Phone Number
1st District (Houston)	<a href="http://www.1stcoa.courts.state.tx.us">http://www.1stcoa.courts.state.tx.us</a>	(713) 274-2700
2nd District (Fort Worth)	<a href="http://www.2ndcoa.courts.state.tx.us">http://www.2ndcoa.courts.state.tx.us</a>	(817) 884-1900
3rd District (Austin)	<a href="http://www.3rdcoa.courts.state.tx.us">http://www.3rdcoa.courts.state.tx.us</a>	(512) 463-1733
4th District (San Antonio)	<a href="http://www.4thcoa.courts.state.tx.us">http://www.4thcoa.courts.state.tx.us</a>	(210) 335-2635
5th District (Dallas)	<a href="http://www.5thcoa.courts.state.tx.us">http://www.5thcoa.courts.state.tx.us</a>	(214) 712-3450
6th District (Texarkana)	<a href="http://www.6thcoa.courts.state.tx.us">http://www.6thcoa.courts.state.tx.us</a>	(903) 798-3046
7th District (Amarillo)	<a href="http://www.7thcoa.courts.state.tx.us">http://www.7thcoa.courts.state.tx.us</a>	(806) 342-2650
8th District (El Paso)	<a href="http://www.8thcoa.courts.state.tx.us">http://www.8thcoa.courts.state.tx.us</a>	(915) 546-2240
9th District (Beaumont)	<a href="http://www.9thcoa.courts.state.tx.us">http://www.9thcoa.courts.state.tx.us</a>	(409) 835-8402
10th District (Waco)	<a href="http://www.10thcoa.courts.state.tx.us">http://www.10thcoa.courts.state.tx.us</a>	(254) 757-5200
11th District (Eastland)	<a href="http://www.11thcoa.courts.state.tx.us">http://www.11thcoa.courts.state.tx.us</a>	(254) 629-2638
12th District (Tyler)	<a href="http://www.12thcoa.courts.state.tx.us">http://www.12thcoa.courts.state.tx.us</a>	(903) 593-8471
13th District (Corpus Christi & Edinburg)	<a href="http://www.13thcoa.courts.state.tx.us">http://www.13thcoa.courts.state.tx.us</a>	(361) 888-0416
14th District (Houston)	<a href="http://www.14thcoa.courts.state.tx.us">http://www.14thcoa.courts.state.tx.us</a>	(713) 274-2800

# STEPS IN AN APPEAL

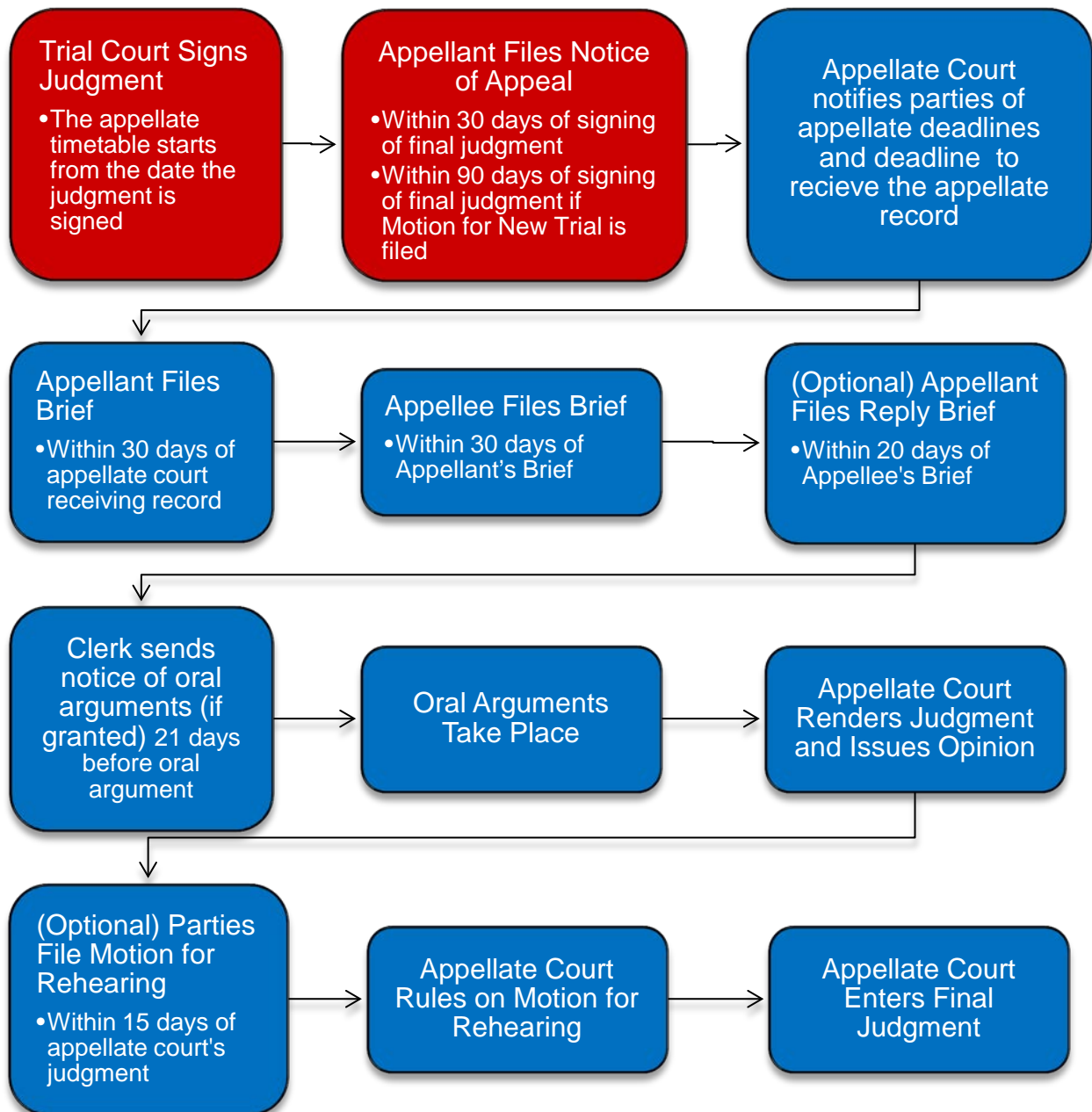
The non-comprehensive chart below depicts some of the common steps that a *pro se* litigant will go through during the process of an appeal. We advise you to review the chart and the TRAP to ensure your compliance with the rules. You are required to file certain documents with the trial court and others with the appellate court having jurisdiction over your appeal. A red box is an action taken in or by the trial court and a blue box is action taken in or by the appellate court.





# TIMELINE FOR APPEALS

The following chart, in combination with the chart above, gives the timeline of submission of various parts of an appeal. This chart is a general timeline and will not be applicable to every appeal. Again, the process of appeal will take place in both the trial court and the appellate court conducting the appeal. As such a red box is an action taken in or by the trial court, a blue box is action taken in or by the appellate court.



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## INDIGENT STATUS

An indigent party is one who, after making a good faith effort, cannot pay for the appellate filing fee, appellate record, or for counsel on appeal. If a court finds a party indigent, it may not have to pay for certain costs associated with the appeal. Below, we answer common questions *pro se* litigants have about determinations of indigence.

### When must I apply for indigent status?

A party must submit an affidavit of indigence to the trial court clerk, before or at the same time as a notice for appeal. This means a party typically has (1) either 30 days after trial court signs the final

judgment, or (2) 90 days if a motion for new trial was filed to apply for indigent status. If a party misses the (much shorter) deadline to file an affidavit of indigence, he may be ordered to pay costs associated with the appeal, and can face dismissal of the appeal if these costs are not timely paid. See page 46 for a current schedule of filing fees.



#### Affidavit

A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public

### How do I establish indigent status?

In a civil case, a party can establish indigence in the following three ways:

1. By Affidavit;
  - A party may proceed without advance payment if (1) it files an affidavit of indigence in compliance with TRAP 20.1; (2) the claim of indigence is not contested or if contested, the court finds for the party claiming indigence; and (3) the party files a timely notice of appeal.

- 
- If an affidavit of indigence is filed in conjunction with either a certificate from Interest of Lawyers Trust Accounts (ILTA) or Texas Access to Justice Foundation (TAJF) it becomes uncontestable.

2. By Certificate;

- A party may proceed to trial without prepaying the associated costs if it has a certificate from ILTA or the TAJF stating that the party was screened for eligibility to receive free legal services.

3. By Presumption of Indigence;

- If a parent is found indigent by the trial court during a suit in which termination of the parent-child relationship or managing conservatorship is requested, the parent retains this status throughout the suit.

## **What is in an affidavit of indigence?**

An affidavit of indigence is an affidavit swearing that a party is unable to pay the costs associated with a trial or appeal. An affidavit of indigence must include the name of the party filing the affidavit and what amount in court costs the party could pay. Indigent status is determined on a party's present ability to pay, not future ability. However, if a court later deems that a party who has received indigent status can pay, it may order the party to pay as much as possible. Additionally, the following information must be included in an affidavit of indigence:

- Nature and amount of all the party's current income;
- Income of the party's spouse and whether or not it is available to the party;

- 
- Real (i.e. land or houses) and personal property (i.e. cars, TVs, etc.) the party owns;
  - Cash the party holds and amounts on deposit that the party may withdraw;
  - Other assets;
  - Number and relationship to party of any dependents;
  - Nature and amount of the party's debts;
  - Nature and amount of the party's monthly expenses;
  - Party's ability to obtain a loan for court costs;
  - Whether an attorney is providing free legal services to the party without a contingent fee; and
  - Whether an attorney has agreed to pay or advance court costs.

### **Can I appeal a finding that I am not indigent?**

If a trial court's order finds against a party applying for indigence, that party can appeal the order by filing a motion challenging the order within 10 days of the date the order is signed or within 10 days of filing the notice of appeal, whichever is later. See TRAP 20.1(j).

### **If I am found indigent by the court what do I have to pay?**

The amount that an indigent party has to pay depends on the indigent classification that they are given. If the court finds no payment status then the court fees and fee for the clerk's and reporter's record will be waived. However, if a court finds a party is able to partially pay, it will give partial payment status. If a party receives partial payment

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status then it must pay the amount set by the court.

### **Can the court appoint legal counsel for me?**

The trial court can appoint legal counsel on appeal in misdemeanor criminal cases facing confinement and all felony criminal cases. In a civil proceeding, the court can only appoint legal counsel in a suit filed by a government entity in which termination of the parent child relationship or appointment of a conservator for a child is requested. In any other civil matter, a litigant will have to provide legal counsel or appear *pro se*.

### **How do I obtain court appointed legal counsel?**

In a criminal case, if the trial court has found the defendant indigent for purposes of trial, the court will appoint legal counsel on appeal if requested and if the trial court finds the defendant indigent for purposes of appeal.

In civil proceeding, dealing with one of situations listed above the court will appoint counsel upon a finding of indigence.

### **What guidelines will the trial court use to determine if I am indigent?**

Each Texas county has guidelines and financial standards that it applies to determine whether a party is indigent. To get a better understanding of your county's Indigent Determination Standards, visit <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID>.

# NOTICE OF APPEAL

A notice of appeal is a short statement filed with the trial court clerk stating that a party is dissatisfied with the trial court's judgment and wants to appeal the decision. **Failure to file a timely notice of appeal will lead to dismissal of the appeal.**

## How long do I have to file a notice of appeal?

A party must file a notice of appeal in civil cases within 30 days after the trial court signs the judgment. However, a party has:

- 90 days to file a notice of appeal if any party timely files:
  - A motion for new trial;
  - A motion to modify the judgment;
  - A motion to reinstate; or
  - A request for findings of fact and conclusions of law;
- only 20 days to file a notice of appeal in an accelerated appeal;
- 6 months to file a notice of appeal in a restricted appeal;
- only 14 days to file a notice of cross-appeal after another notice of appeal is filed or within the appropriate time period if it meets the qualifications above.

## What do I have to file in my notice of appeal?

The notice of appeal must include, per TRAP 25.1(d), the following:

- 
1. Identity of the trial court;
  2. The case's trial court number;
  3. Style (who sued who);
  4. Date of the judgment or order being appealed from;
  5. State that the party desires to appeal the decision
  6. State the name of the Court of Appeals the case is being appealed to; and
  7. State the name of each party filing the notice.

We have provided an example notice of appeal at the end of this guide. See Attachment 1: Notice of Appeal.

### **When I file a notice for appeal, do I have to file any other documents?**

A party must serve the notice of appeal on all parties to the trial court's final judgment and include a certificate of service with the notice of appeal. A party should file a docketing statement (see TRAP 32.1 for more information on docketing statements) and pay the clerk of the appellate court all required fees. If a party is seeking indigent status, he must notify the appellate court if he is presumed indigent (TRAP 20.1(a)(3)), or must file an affidavit of indigence before or with the notice of appeal. When filing a notice of appeal a party should also state if the case is an accelerated appeal.

### **What is a docketing statement?**

A docketing statement is an administrative tool that allows the clerk of the court to quickly screen a case for procedural or jurisdictional defects. The Supreme Court of Texas has published a uniform docketing statement, which each Court of Appeals posts

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on its website. Each appellate court's website can be found by visiting this website:  
<http://www.courts.state.tx.us/courts/coa.asp>.

### **What is a certificate of service?**

A certificate of service is a short statement, stating that a party has served a document to the opposing parties. Below is an example certificate of service.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on <date>, a copy of the foregoing <title of document served> was served on the following counsel for <Appellee's name/Appellant's name>:

Julie Jones

The Jones Law Firm

123 Main Street

Anytown, Texas 12345

### **How many copies of a notice for appeal are required?**

A party is only required to file one notice for appeal with the trial court.

### **Once I file my notice for appeal, what do I do?**

The party should contact the trial court in order to obtain a copy of the clerk's record and, if necessary to the appeal, a copy of the reporter's record. Additionally, at this time the party should begin their legal research and work on their appellate brief.



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# PREPARING A BRIEF

A brief is a written document that presents the legal and factual arguments of a party. Parties write briefs to support the main points of error (complaints about a trial court's decision) on appeal. The following sections explain what a brief is and sets forth the sections a party must include when filing a brief with the court. Every appellate brief is different and there are no set examples or forms for briefs distributed by the Supreme Court of Texas or Texas Court of Criminal Appeals. Failure to properly brief an issue on appeal can result in waiver of the issue due to inadequate briefing. However, the examples below should decrease the likelihood of waiver of issues or dismissal of the case. Writing an appellate brief is not easy. A party cannot substitute these examples of TRAP guidelines for the advice of a licensed attorney.

## Requirements of a Brief

According to TRAP 38.1, an appellant's brief must contain the following:

1. Identity of Parties and Counsel;
2. Table of Contents;
3. Index of Authorities;
4. Statement of the Case;
5. Any Statement Regarding Oral Argument;
6. Issues Presented;
7. Statement of Facts;
8. Summary of the Argument;
9. Argument;
10. Prayer; and



### Appellant

The party that is taking the appeal to the appellate court

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## 11. Appendix in Civil Cases.

According to TRAP 38.2, an appellee's brief must contain the following:

1. Table of Contents;
2. Index of Authorities;
3. Any Statement Regarding Oral Argument;
4. Issues Presented;
5. Statement of Facts;
6. Summary of the Argument;
7. Argument;
8. Prayer; and
9. Appendix in Civil Cases (but need not include anything that was already provided in the appellant's brief).



### **Appellee**

The party that is adverse to the party who brought the suit

All of the sections listed above must be included in a brief. It is important to remember, that if any of the sections are not in the brief there is a possibility that a court will not consider a party's argument or issues presented.

This guide focuses on writing an appellant's brief because an appellee's brief includes all of the sections that are included in an appellants brief. Each section that applies to both an appellee and appellant brief is noted below. Finally, the examples below will use the hypothetical case of *Doe v. Smith*, where John Doe is appealing the factual sufficiency of the trial court's judgment in his trespass suit against Jane Smith.

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## Cover Page

A legal cover page presents all of the important procedural information relating to the case. A filed document should include a cover page as required by TRAP 9.4. Below is an example of what a cover page may look like.

### CAUSE NO. 06-14-00123-CV

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IN THE  
FIFTEENTH COURT OF APPEALS  
AT ANYTOWN

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Doe v. Smith

---

Original Proceeding from the 425th District Court,  
The Honorable Joe Johnson, Presiding

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Appellant's Brief on the Merits

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### ORAL ARGUMENT REQUESTED

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John Doe  
456 Main Street  
Anytown, Texas 12345  
Telephone: (123) 456-7890

*Pro Se Litigant*

## Identity of Parties and Counsel

**Appellant only. Appellee may file if appellant's list is incorrect.**

The identity of parties and counsel gives a complete list of all parties that were a part of

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the trial court's judgment. This section also gives the names and addresses of all trial and appellate counsel. The one exception to listing the names of parties in this section is when there is a minor involved in the case. Under that scenario, the minor should be given an alias; e.g. Jimmy Doe becomes J.D. Below is an example of the identity of parties and counsel section.

## **IDENTITY OF PARTIES AND COUNSEL**

Pursuant to Texas Rule of Appellate Procedure 38.1(a), appellant presents the following list of all parties and names and addresses of its counsel:

**Appellant/Plaintiff:**

John Doe

**Counsel:**

John Doe  
456 Main Street  
Anytown, Texas 12345  
Telephone: (123) 456-7890

**Respondent:**

The Honorable Joe Johnson  
425th Judicial District Court  
Anytown Courts Building  
789 Main Street  
Anytown, Texas 12345

**Appellee/Defendant:**

Jane Smith

**Counsel:**

Julie Jones  
Texas State Bar No. 12345678  
The Jones Law Firm  
123 Main Street  
Anytown, Texas 12345  
Telephone: (123) 123-4567

## **Table of Contents**

### **Appellant and Appellee**

A brief must have a table of contents with references to pages of the brief. Additionally,

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the table of contents must indicate the subject matter of each issue or point.

## TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL.....	19
TABLE OF CONTENTS .....	20
TABLE OF AUTHORITIES.....	21
STATEMENT OF THE CASE.....	22
STATEMENT REGARDING ORAL ARGUMENTS .....	23
ISSUES PRESENTED .....	24
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SUMMARY OF THE ARGUMENT .....	25
ARGUMENT.....	28
Did the trial court have factually sufficient evidence to rule for John Doe? .....	28
PRAYER .....	29
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## Index of Authorities

### Appellant and Appellee

In addition to a table of contents, a brief must contain an index of authorities. An index of authorities indicates what cases, statutes, or other authorities the brief has cited. This list should be arranged alphabetically. Below is an example table of authorities.

### TABLE OF AUTHORITIES

#### Cases

<i>Brown v. Davis</i> , 123 S.W.2d 321 (Tex. 2002) .....	21, 23, 26
<i>Miller v. Wilson</i> , 456 S.W.2d 654 (Tex. 2000) .....	23

#### Statutes

Tex. R. App. P. 38.1(a).....	17
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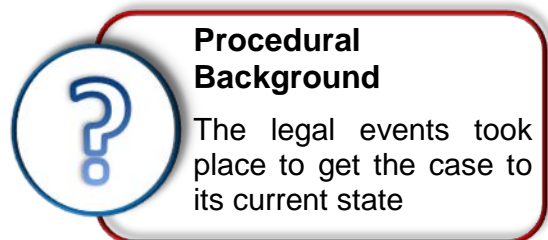
## Statement of the Case

**Appellant only. Appellee may include if dissatisfied with appellants statement.**

**-Should not exceed 1/2 page**

A statement of the case is a brief statement of the procedural background of the case.

This tells the court what type of case it was, the course of the proceeding, and trial courts judgment or ruling in the case. This section should not include the facts of the case.



**Procedural Background**  
The legal events took place to get the case to its current state

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## STATEMENT OF THE CASE

**Nature of the Case:** Appellant/Plaintiff John Doe brought a civil trespass cause of action against Appellee/Defendant Jane Smith arising out of damage his garden suffered during a trespass by Smith on January 1, 2014. (CR at 1). Appellant alleges Appellee consciously disregarded his “No Trespassing” signs and damaged his garden. (CR at 2).

**Respondent:** Honorable Jim Johnson, 425th Judicial District Court, Anytown County, Texas.

**Respondent’s Action:** February 1, 2014, the trial court entered final judgment, a take nothing judgment in favor of appellee. (CR 150; Appx. Tab 1). The trial court also awarded appellee attorney’s fees. (CR150).

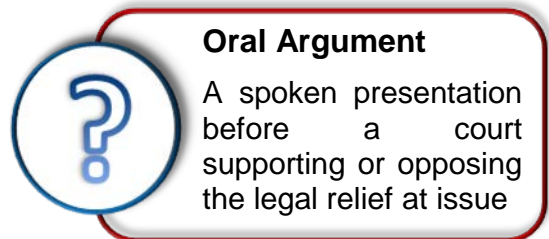
### Statement Regarding Oral Arguments

#### Appellant and Appellee

**-Must not exceed 1 page.**

A party may wish to waive oral argument on appeal. If the party wishes to present oral

argument, a statement such as “**ORAL ARGUMENT REQUESTED**” should be added to the cover page of the brief. The party will then include a brief statement explaining why oral argument is appropriate and how the addition of oral arguments will aid the



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appellate court’s decision process. An appellee may also include a statement of oral argument; this statement should state either the need for oral arguments or why there is no need for oral arguments. Appellate courts only allow oral argument in a small number of appeals—you must persuade the court that it would be useful in your case. A sample statement regarding oral arguments is below.

## STATEMENT REGARDING ORAL ARGUMENTS

This case raises significant issues related to the factual sufficiency of the evidence presented in relation to the rule set forth in *Brown v. Davis*, 123 S.W.2d 321, 325 (Tex. 2002). The inclusion of oral arguments will significantly aid the decision of this Court.

\*A proper statement regarding oral arguments will have more detail and legal support (cases, statutes, etc.) for each issue that the party deems necessary for oral arguments. See page 53 for more information on oral arguments.

### Issues Presented

**Appellant only. Appellee may file if dissatisfied with appellants issues presented or if the appellee wishes to cross-appeal a trial court’s decision.**

The brief must state all issues or points presented for review. See below for an example of an issues presented section.



#### Issue/Point of error

A point of dispute between two or more parties



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## ISSUES PRESENTED

1. Did the trial court err in excluding critical evidence presented at trial?
2. Is there factually sufficient evidence to support the judgment of the trial court?

\*There will be additional questions for each issue that a brief presents.

### Statement of Facts

**Appellant only. Appellee may file if dissatisfied with appellants statement.**

The brief must state concisely and **without argument**, the facts pertinent to the issues presented. A party should support the facts with citations to the record. The appellate court will review the record citations to ensure accuracy of the facts presented in the statement of facts. An example of a statement of facts is below.

### STATEMENT OF FACTS

On January 1, 2014, Jane Smith (Appellee) entered the property of John Doe (Appellant) without his permission and destroyed his prize-winning garden. (CR2). Before the incident, the Appellant received a letter from Appellee, stating that she was going to come over and destroy his garden for beating her in this year's gardening competition. (RR25). Appellant filed suit in the 425<sup>th</sup> District Court in Anytown County against Appellee claiming she had trespassed and maliciously destroyed his property. (CR1).

On February 1, 2014, the trial court heard the case without a jury. (RR1) During the hearing, Appellant presented both the letter by Appellee and video recording of

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Appellee trampling the garden. (RR34;Ex.3-4). The trial court excluded this critical evidence and entered a take-nothing judgment in favor of Appellee. (CR150;Appx.1).

Appellant has appealed to the Fifteenth Court of Appeals at Anytown asking that the Appellate Court overturn the trial court's judgment.

## **Summary of the Argument**

### **Appellant and Appellee**

The summary of the argument section is a brief, clear, and accurate statement of the arguments that a party makes in the rest of the brief. This section *briefly* explains what issues and arguments a party will raise in the arguments section and should not merely repeat the argument section. See an example below.

## **SUMMARY OF THE ARGUMENT**

The trial judge erred in excluding and failing to consider critical evidence that was presented at trial. The exclusion of the evidence is contradictory to the rulings established by the Supreme Court of Texas in *Miller v. Wilson* and in *Brown v. Davis*. *Brown v. Davis*, 123 S.W.3d 321, 325 (Tex. 2002); *Miller v. Wilson*, 456 S.W.3d 654, 657 (Tex. 2000). Because the trial court should have considered the evidence, the trial court's decision is so contrary to the overwhelming weight of this evidence as to be clearly wrong and unjust. Thus, the trial court's judgment is not supported by factually sufficient evidence. For this reason, the case should be reversed and remanded to the trial court for further consideration.

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\*In cases with several points of error, each issue will be discussed along with supporting legal authority.

## Argument

### Appellant and Appellee

**-Must not exceed 15,000 words if typed or 50 pages if not.**



### Argument

The section of a brief that attempts to persuade the court. This usually contains both record citations and legal authority to support the assertions

A brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument section is where the substance of a brief comes from. Moreover, in this section you will explain all of the issues that a party is raising.

While this is an argument section, this does not mean a party may write whatever it wants in this section. Any statement a party makes should relate back to some legal rule or authority, and complain about a legal error the trial court made. For example, a criminal defendant appearing *pro se* on appeal should not simply write my = sentence is not fair. It is better to write, the Supreme Court of Texas in *Thomas v. State* said that a trial court abuses its discretion by giving a sentence outside of the statutory range, and my sentence is outside of the statutory range. *Thomas v. State*, 789 S.W.2d 987 (Tex. 1995). This statement is supported by a legal authority and relates back to the legal error of the trial court.

Typically, an argument section should be broken down into paragraphs concisely explaining each issue presented. The argument can be structured by following the

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IRAC formula for writing. IRAC stands for Issue, Rule, Application, and Conclusion.

### **Issue**

Start with a statement of the issue or point of error on appeal. This should set the tone of the argument and inform the reader on what the argument will encompass.

### **Rule**

A discussion of applicable rules follows the issues section. In this discussion, a party states the legal rules that govern the issues on appeal. A party should support each rule stated with specific citations to cases, statutes, or other legal authority that relate to it. The party should also research, understand, and state the standard of review used by the trial court in reviewing the issue before it (i.e. abuse of discretion, de novo, etc.).

### **Application**

Application is the next, critical step. In the application discussion, a party explains how the legal rules apply to the facts of its particular case. This section ties in any legal authority the party has uncovered during legal research and explains how the research supports the argument asserted. A party should also support statements in this section with specific citations to cases, statutes, or other legal authority.

### **Conclusion**

Finally, a party should conclude by briefly restating why the trial court's decision was improper, and by asking the appellate court to take a particular action. (The Appellee

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will briefly explain why the trial court's action was proper).

See page 50 for more information on brief writing and legal citation. The basic argument below follows the IRAC model.

## **ARGUMENT**

### **Did the trial court err in excluding critical evidence?**

This evidence presented at trial was (1) a letter sent by the Appellee that threatened to destroy Appellant's garden, and (2) a video recording of Appellee destroying the garden on January 1, 2014. At trial, the court excluded both exhibits.

The Supreme Court of Texas in *Brown v. Davis* held that a letter in a trespass case is admissible and is sufficient to prove the intent of another party. *Brown*, 123 S.W.2d at 323. In *Miller v. Wilson*, the Supreme Court of Texas found that a video recording was an appropriate method for ensuring the security of one's property and should be admissible as evidence. *Miller*, 456 S.W.2d at 659. Furthermore, the Supreme Court of Texas found in both cases that it was an abuse of discretion not to consider this evidence at trial if properly presented. *Brown*, 123 S.W.2d at 325; *Id.* at 661.

In the findings of fact and conclusions of law, the trial court clearly stated that it did not regard either the letter or the video recording as admissible evidence. Because the Supreme Court of Texas has stated a trial court must consider these two mediums, when properly presented to it, the trial court erred by disregarding these items.

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The Supreme Court of Texas states that it is an abuse of discretion not to properly consider evidence at trial. Because the trial court did not consider the letter and video recording, it abused its discretion and adversely affected the Appellant.

**Is there factually sufficient evidence to support the judgment of the trial court?**

...

## **Prayer**

### **Appellant and Appellee**

A prayer is a short conclusion that clearly states the remedy a party seeks from the court. See a prayer below.

## **PRAYER**

Appellant, John Doe, respectfully, for the reasons stated above, asks the Court to reverse the judgment of the trial court and remand the case for a new trial.

## **Appendix (Civil Cases Only)**

**Appellant and Appellee. Appellee need only include items that were not in appellant's appendix.**

An appendix is a collection of documents that support the brief as well as various documents distributed by the lower court. The following items must be included in the appendix if they are available:

- The trial court's judgment or other appealable order from which the appeal is sought;

- 
- The jury charge and verdict, if any;
  - The trial court’s findings of fact and conclusions of law, if any; and
  - The text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding the text of cases) on which the argument is based, and the text of any contract or other document that is central to the argument.

## **APPENDIX**

Tab 1: Final Judgment Order by the Trial Court

\*Order would be attached here.

Tab 2: Trial Court’s Findings of Fact and Conclusions of Law

\*Findings of fact and conclusions of law would be attached here.

## **RECORD**

Relevant portions of the clerk’s and reporter’s record will have already been received by the appellate court prior to the appellant’s deadline to file a brief. If a relevant portion of either record is missing, the appellant should file a motion for an extension of time to file its brief if it needs one. Here, the clerk’s record would contain, among other items, Appellant’s Original Petition, the Trial Court’s Final Judgment, the Trial Court’s Findings of Fact and Conclusions of Law, and the Notice of Appeal. The reporter’s record would contain a transcript of the trial proceedings, and exhibits introduced a trial such as the letter and video footage. A party can use CR as the abbreviation for a clerk’s record and RR for the abbreviation of the reporter’s record. Record citations and page numbers should be provided throughout the brief.

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## **P**REPARING A MOTION

A motion is a written statement requesting that a court make a specific ruling or order. There is a wide variety in the types of motions that can be filed with the appellate court, including motions for extensions of time to file a document, or motions requesting that the appellate court reconsider its decision.

As motions cover a wide range of subjects, there is no set form on what a motion will look like. However, this does not mean that there are not guidelines for what a motion must contain. The TRAP has set out these guidelines in rule 10:

1. A motion must contain any document or item that is required by a rule governing the motion;
2. Explain why it is needed;
3. Set forth the relief that is sought;
4. Be served or filed with any brief, affidavit, or other paper filed in support of the motion; and
  - Generally, if a litigant is filing a motion that does more than ask for an extension of time, a party will file a supplemental brief to inform the court on the evidence and legal authority it has for ruling on the motion.
  - Any brief a party files in support of a motion should include: issues presented by the motion, statement of facts, argument explaining why the appellate court should take the action requested, and prayer.
    - More information about each of these sections can be found above in the Preparing a Brief section.



- 
5. In civil cases, a motion must contain a statement that the filing party met with or reasonably attempted to meet with all other parties about the merits of the motion and whether those parties object to the motion.

Additionally, any party that is adverse to a motion may file a response to a motion at any time before the court rules on the motion or by any deadline set by the court.

The following list of motions are those that are most commonly filed with the court or have a TRAP rule associated with them.

- Motion for Extension of Time (TRAP 10.5)
  - These motions ask for an extension of time to file a document with the court. A motion for extension of time must state the following:
    - The deadline for filing the item in question;
    - The length of the extension sought;
    - The facts relied on to reasonably explain the need for an extension;  
and
    - The number of previous extensions granted regarding the item in question.
  - This list does not cover all motions for extension of time but following these guidelines should work for most motions for extension of time.
- Motion to dismiss the appeal
  - An appellant can file a motion to dismiss the appeal if he no longer wishes to pursue the appeal.
- Motion to Postpone Argument (TRAP 10.5)

- 
- A motion to postpone argument is one that asks for a later date for oral arguments. However, unless all parties agree or the cause is apparent to the court, a party should support this motion with supporting evidence.

- Motion for Rehearing or En Banc Reconsideration (TRAP 49, 52.9, 64, 79)

- A party files a motion for rehearing when it feels there are points of error in a court's opinion. No response from the court is required and the court is not required to rule in favor of a new hearing if the evidence does not support the need for one.



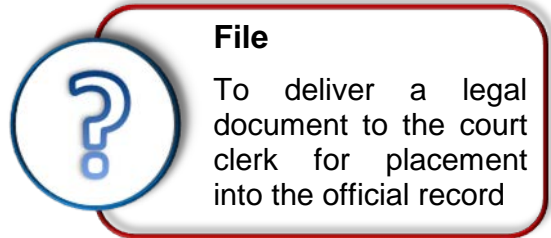
**Opinion**

A court's written statement explaining its decision in a given case

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# HOW TO FILE A DOCUMENT

Filing a document with the court clerk is the only way the court is able to consider the document when making its decision. There are two main ways *pro se* litigants can file documents with the court. The first way is to file a document either in person or by mail. The second way is to file a document electronically if the litigant has access to a computer and the internet. The following two sections will explain what is required in both of these methods.



## Electronic Filing

While *pro se* litigants certainly have the option of filing a document in person, *pro se* litigants can also file documents electronically if it is more convenient or if the litigant must meet a deadline to file a document and the clerk's office is already closed. A court will consider any document timely filed by a litigant if it is filed electronically before midnight on the date of filing. This deadline gives a litigant an additional 7 hours to file from the 5:00 P.M. deadline for documents filed in person. Electronic filing also allows for faster receipt and transmission of documents and ease of review by the appellate court.

When choosing to file a document online, litigants should first go to [www.efiletexas.gov](http://www.efiletexas.gov). Currently [www.efiletexas.gov](http://www.efiletexas.gov) only supports versions 8, 9, and 10 of Internet Explorer and the latest version of Mozilla Firefox; no other web browsers are currently supported. If problems occur using a particular browser with [www.efiletexas.gov](http://www.efiletexas.gov), try downloading Mozilla Firefox to correct this issue. Additionally, if Microsoft Silverlight is not installed

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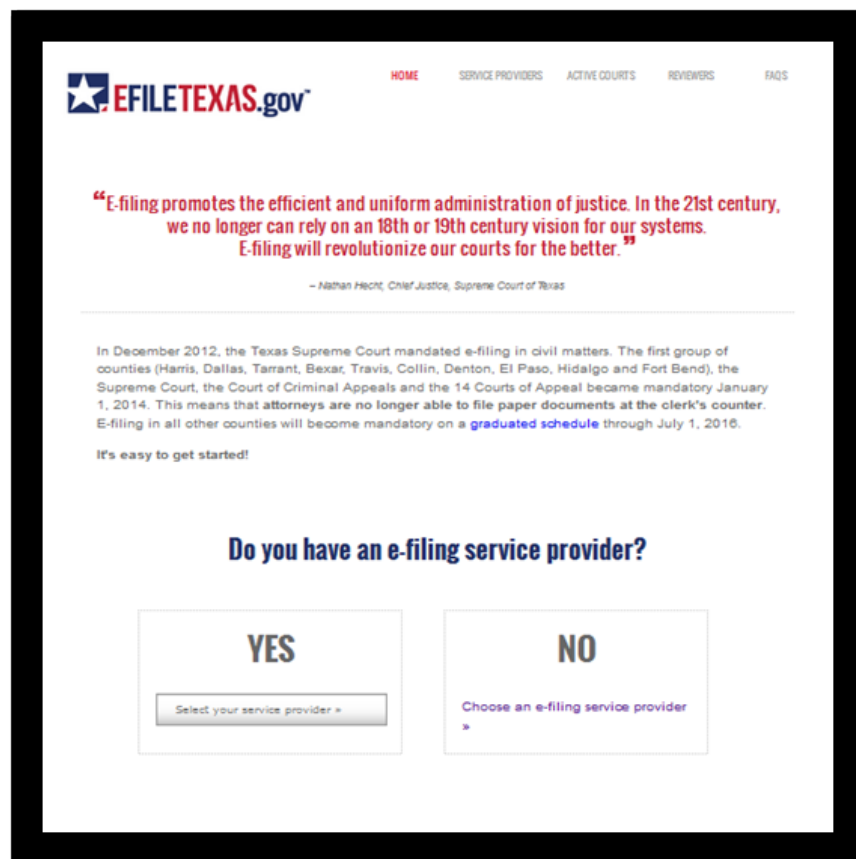
on the computer, [www.efiletexas.gov](http://www.efiletexas.gov) will require this be installed prior to registration and will prompt a user to install it before proceeding. To install Microsoft Silverlight, follow the onscreen steps after picking EFileTexasCourts in Step 2: Service Providers.

The steps below will walk litigants from access and registration with [www.efiletexas.gov](http://www.efiletexas.gov) to final submission of their document. If any problems arise during the submission process, visit the EFileTexasCourts help guide at

[http://content.tylerhost.net/docs/eFileTexas/help/eFile.TXCourts.gov\\_User%20Guide.pdf](http://content.tylerhost.net/docs/eFileTexas/help/eFile.TXCourts.gov_User%20Guide.pdf)

**Step 1: [www.efiletexas.gov](http://www.efiletexas.gov).**





Open up Internet Explorer or Mozilla Firefox and go to [www.efiletexas.gov](http://www.efiletexas.gov).



When the page above appears: (1) select YES and go to Step 4: Workspace, if you have previously filed a document electronically or previously registered with the Texas court system to file a document electronically, or (2) Select NO, if this is your first time filing a document with the Texas court system and proceed to Step 2: Service Providers.

## Step 2: Service Providers.

After selecting NO, you should arrive at this page.

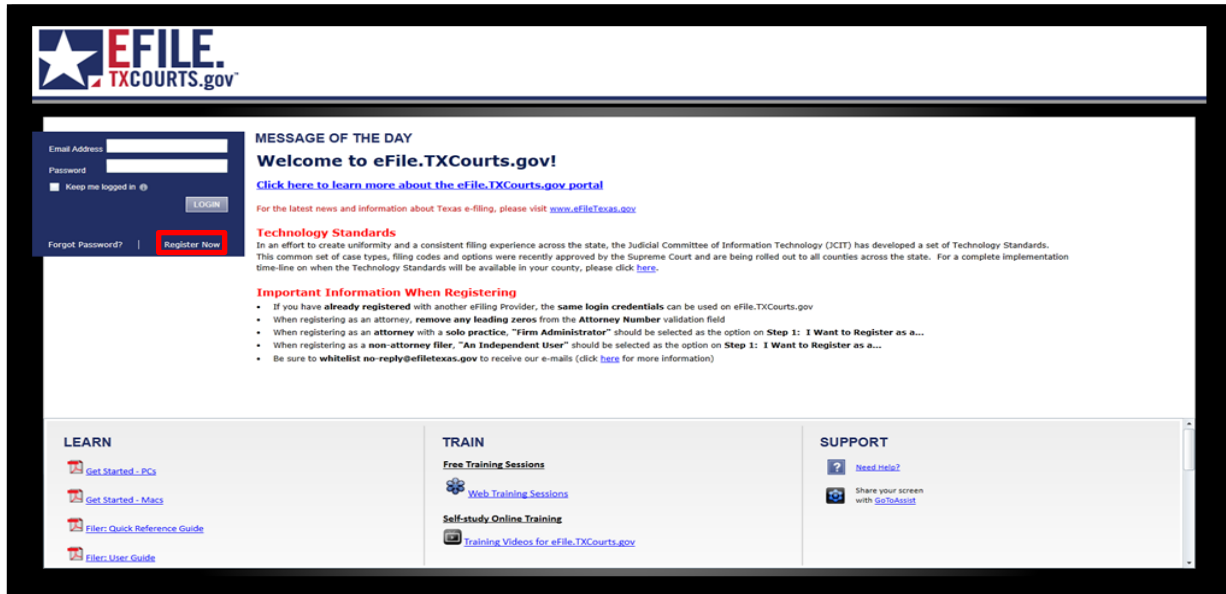
	 <b>EFILE</b> State Provided EFSF eFile.TXCourts.gov	 <b>Court File America</b>	 <b>filetime</b>	 <b>iDocket</b>	 <b>ONE LEGAL</b> ONLINE COURT SERVICES	 <b>eLawServices</b>	 <b>File &amp; Serve Xpress</b>	 <b>MyFileRunner</b>	 <b>ProDoc eFiling</b>
<b>Free Option</b>	✔	✔	✔	✔	✔	✘	✘	✘	✘
<b>Price Structure</b>	Free	Free Plan – Basic e-filing of text searchable PDF documents  Fee Plan – Above e-filing with credit account extended, customized invoicing, and reports  No contract required or other fees	Free plan – basic e-filing functions without the ability to submit word processor files and no fax service  \$1.99 plan – all basic functions plus upload word processor files and free fax service  \$3.99 plan – all the above features plus monthly invoicing for volume filers  There is no contract, no registration fee, and no other hidden fees. You only pay when you submit e-filings and/or eServices.	Free for a Limited Time	Free Solution – Includes unlimited eFile and eService with no contract to sign, conform copies, access to comprehensive resource center, document conversion, industry best workflow  Premium, Simplified Billing Solution (\$1.95 limited offer) Includes all features offered under the free plan plus: one invoice detailing all court and provider fees, all court fees advanced! (all fees are charged to One Legal's credit card), concierge service, local training and account support, MCLE accredited courses.	We offer a plan for everyone. A fully managed plan for the pro se or occasional filer, fee services for indigent filers, a competitive per transaction fee for law practices and legal service organizations or for large filers choose one of our low cost monthly plans.	Transaction and subscription-based pricing for e-filing/serving documents. Includes unlimited access to a firm's sent and received documents and case info. Transactional or subscription base pricing for Optional Services based on a firm's needs.	Flat fee of \$8.00 per filing, excluding state and court fees and taxes.  Free eService – Documents electronically served to specified attorneys at same time as court filing.  Free online training – Classes for individuals or groups.  Free Registration eConcierge – Registers and manages your CO and Passwords.  Free eFiling Concierge – MyFileRunner professional services can submit your filings for you.	\$3.00 per submission. A single submission may include multiple filings. All features available to all filers, no tiered services.
<b>Support Features</b>	<b>Self-Service Support</b> Getting Started: <b>Hosted Webinars</b> <b>Training Videos</b>  Phone: 855-830-3453 Hours: 7 a.m. – 9 p.m., Mon - Fri Call Center Locations: Plano & Longview Live Chat: Yes Email: support@efileTexas.gov	<b>Training Guides on Website</b> <b>Online Support</b> Phone: 712-653-0195 Hours: 7:30 a.m. – 7:00 p.m., Mon - Fri Call Center Location: Houston Live Chat: Yes Email: support@courtfileramerica.com	<b>Hosted Training Webinars</b> <b>Training Videos</b> <b>Webinar Guides</b> Phone: 800-558-1233 Hours: 24 x 7 Call Center Location: San Antonio Live Chat: Yes Email: support@filetime.com Website: www.filetime.com	<b>Online Support</b> Getting Started: <b>Training Videos</b> Phone: 1-800-Docket.com Hours: 24 x 7 Call Center Location: Amarillo & El Paso Live Chat: No Email: support@idocket.com	<b>Customer Support</b> <b>Training Information</b> Phone: 800-938-8815 Hours: 8 a.m. - 7:30 p.m., Mon - Fri Call Center Location: U.S. based live customer support Live Chat: No Email: support@onelegal.com	Phone: 800-943-4095 Hours: 9 a.m. – 12:00 a.m., x 7 Call Center Location: Irving Live Chat: No Email: info@elawservices.com	Phone: 877-433-4533 Hours: 24 x 7 Call Center Location: Irving Live Chat: Yes Email: info@fileandserve.com	<b>Getting Started:</b> <b>Demo</b> <b>Training Options</b> <b>Training Videos</b> <b>Hosted Webinars</b> <b>Downloadable Materials</b> Phone: 800-903-8110 or 512-206-7182 Hours: 24 x 7 + 365 Call Center Location: Austin Live Chat: Yes Email: support@myfilerunner.com	<b>Getting Started:</b> <b>Training Options</b> <b>Training Videos</b> Phone: 800-758-6418 Hours: 8 a.m. – 7 p.m. Call Center Locations: Englewood, TX & Universal City, Texas Live Chat: No Email: efilemanager@thompsonreuters.com

This page lists all of the services that are compatible with [www.efiletexas.gov](http://www.efiletexas.gov). Five of the services are free, and the other four services require a subscription fee. Regardless of the cost, the Texas court system has approved all of the services listed to file documents electronically. The rest of this guide depicts the services provided by EFileTexasCourts. If a different service provider is selected and problems are encountered, visit the help page for additional information on how to resolve this

problem.

### Step 3: Registration.

Once you have clicked on the EFileTexasCourts link, you should be directed to this page.



If the website does not automatically redirect to this page and instead gives an error, try one of the troubleshooting steps on the help page.

This is the logon page and can be reached directly by going to <http://efile.txcourts.gov>.

From this page, you can logon if previously registered with EFileTexasCourts or start a new registration if this is your first time. To start a new registration, click the "Register Now" link, in the login box. The following five screens should appear in order after clicking the "Register Now" link.

**eFileTexas Registration** Step 1 of 5

**I want to Register as a**

Firm Administrator

Each firm must have a designated person to administer the E-Filing system. The Administrator will register the firm and be responsible for setting up and maintaining all users, credit card accounts, and attorneys at the firm.

User with an Existing Firm

Your firm has already been registered with the E-Filing system. You must know your firm ID and have been given permission to set up your account by your Firm Administrator. The Firm ID serves as the common identifier for all users within your firm.

An Independent User

You are a single user, not associated with or represented by a law firm.

All required fields are indicated by an "\*". There is no registration fee for eFileTexas.

**eFileTexas Registration** Step 2 of 5

and Your Users will immediately discontinue use of eFileTexas.gov.

12.5 Severability. This Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision and (b) such invalidity or unenforceability will not affect any other provision of this Agreement.

12.6 Questions and Contact Information. General questions or comments about the eFileTexas.gov Internet Site or eFileTexas.gov may be directed to eFileTexas.gov's Customer Service by e-mail at support@eFileTexas.gov.com or by postal mail at Tyler Technologies, Inc., 5101 Tennyson Parkway, Plano, TX 75024.

12.7 Applicable Law, Jurisdiction and Venue. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Texas, U.S.A., without reference to its choice of law principles to the contrary. The 1980 UN Convention on Contracts for the International Sale of Goods or its successor will not apply to this Agreement.

12.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement, and this Agreement replaces and supersedes any prior verbal understandings, written communications or representations on the subject matter hereof.

I Agree

In Step 1 of the registration process, pick “An Independent User,” as you will not be affiliated with a law firm. During Step 2, read the terms of agreement and click “I Agree.”

**eFileTexas Registration** Step 3 of 5

**Contact Information**

Country\*  
United States of Ame

Address Line 1\*

Address Line 2

City\*

State\* Zip Code\*

Phone Number\*

**eFileTexas Registration** Step 4 of 5

**User Information**

First Name\*  MI

Last Name\*

Email Address\*

Verify Email Address\*

Password\*   
Your password is case sensitive and must be at least six characters.

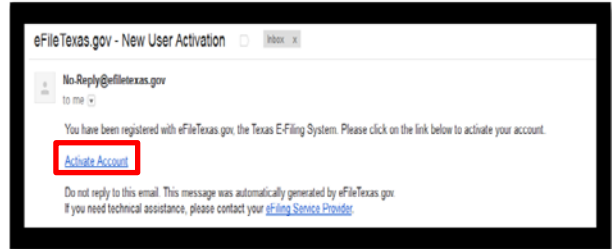
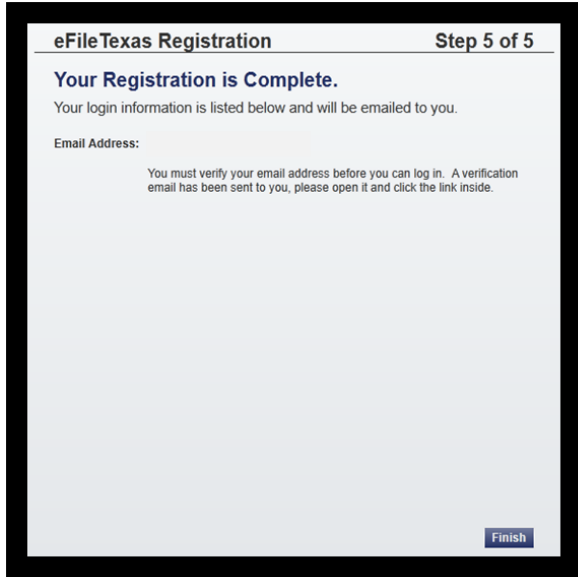
Verify Password\*

Compose a simple question and answer pair which will allow you to restore your password, should you forget it. Please choose a simple, specific question that can only be answered by you. Example: High School Mascot or The Name of My First Pet.

Security Question\*

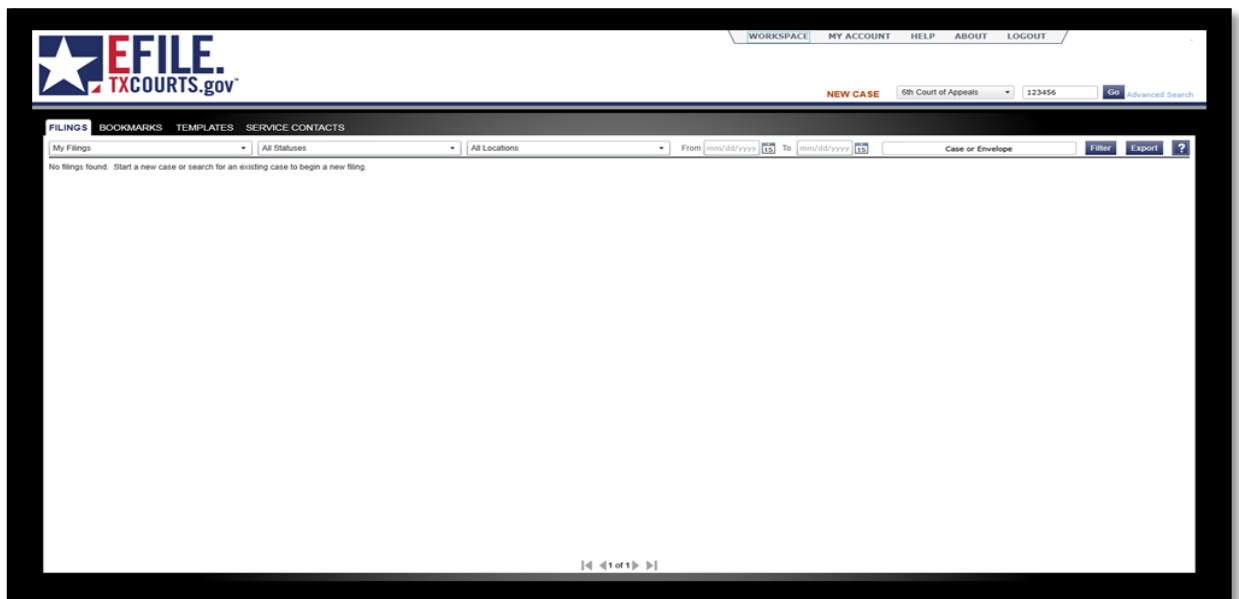
Security Answer\*

In Step 3 and 4, fill out any of the information that is marked with a \*. Ensure that the e-mail address you provide is valid, as a conformation e-mail will be sent to this address.



Once you receive the confirmation e-mail click “Activate Account” to finish the registration process. Upon activation of your account go back to the EFileTexasCourts webpage at <http://efile.tx.courts.gov> and login with your e-mail address and password that you provided in Step 4 of the registration process.

#### Step 4: Workspace.



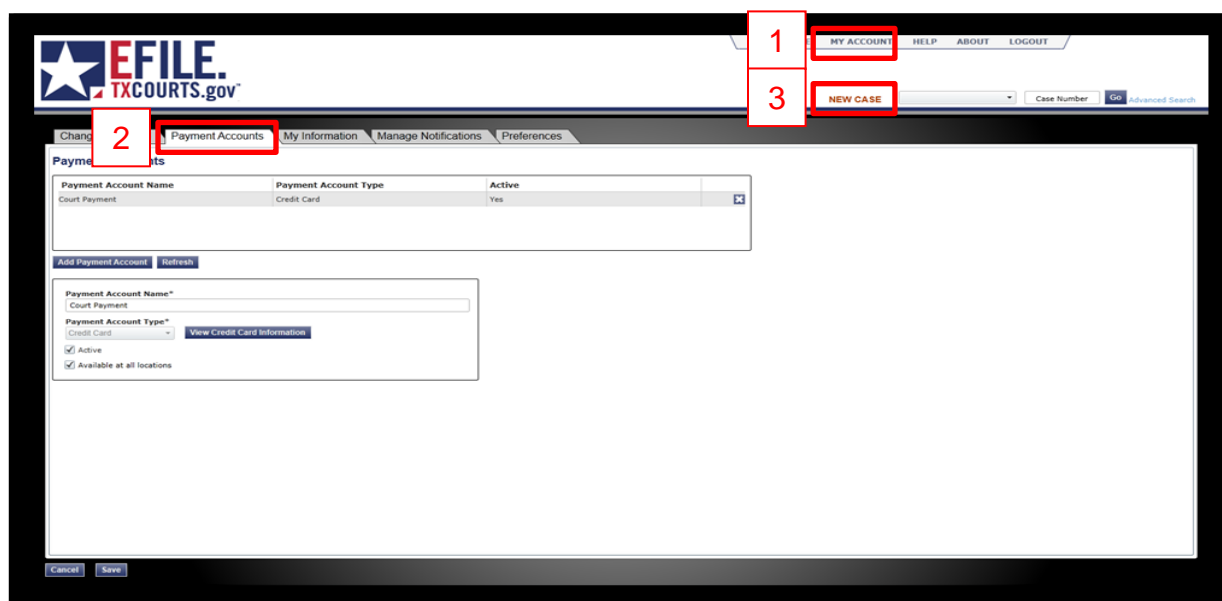


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Once you have successfully logged in you should be redirected towards the page above. This is your workspace and allows you to manage any case that you have filed with the courts or search for cases that you are a party to. In addition, the workspace will let you start the process of appealing a new case if the other party has not already submitted a notice of appeal. Finally, once you have set up a case this is where you will come in order to submit any additional documents, like briefs or motions.

### Step 5: Payment Account.

Before anything can be filed with the Texas court system a payment account must be set up with the website. This can be done by clicking “My Account” followed by the “Payment Accounts” tab on the next page; these actions are marked by the numbers 1 and 2 in the pictures below. Completing these actions will bring you to the page below.



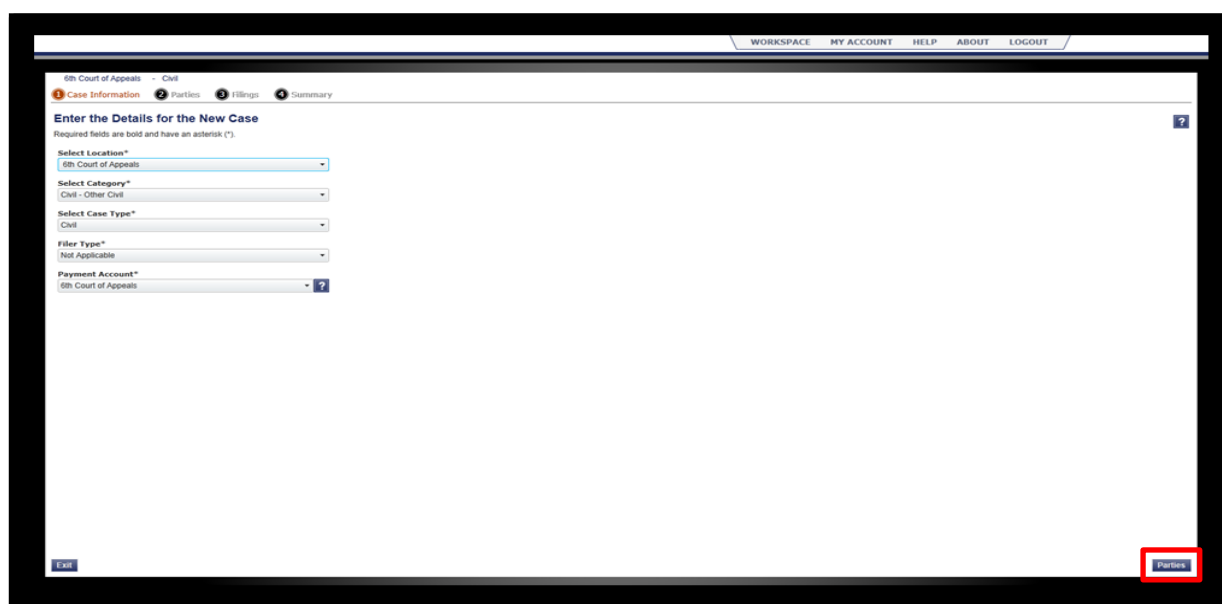
Fill out the required information and provide a valid credit card to set up a payment account. If you believe you are indigent, this information should still be provided.

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However, you will not be charged for certain court costs if your Affidavit of Indigence is approved. There is no filing fee associated with filing an Affidavit of Indigence.

### **Step 6: New Case Details.**

Once you have finished setting up a payment account you can start a new case. To do this, you should select the “New Case” button, marked by the number 3 in the picture above. Clicking “New Case” will take you to the page seen in the picture below.



The screenshot shows a web interface for the 6th Court of Appeals. At the top, there are navigation links: WORKSPACE, MY ACCOUNT, HELP, ABOUT, and LOGOUT. Below this is a breadcrumb trail: 6th Court of Appeals > Civil. The main heading is "Enter the Details for the New Case" with a help icon. A note states "Required fields are bold and have an asterisk (\*)". The form contains several dropdown menus: "Select Location\*" (6th Court of Appeals), "Select Category\*" (Civil - Other Civil), "Select Case Type\*" (Civil), "Filer Type\*" (Not Applicable), and "Payment Account\*" (6th Court of Appeals). A "Save" button is at the bottom left, and a "Next" button is at the bottom right, highlighted with a red box.

On this page, you should fill in the location that the document is to be filed with, either the trial court or the Court of Appeals. Following this, select whether your case is criminal or civil. If applicable, select the specific type of case that you are filing (typically this box will only be found with cases that are filed with a trial court). The other two boxes, Filer Type and Payment Account, should automatically fill in. If they do not, select the appropriate option. Once all of these boxes are filled in, click the “Parties” button to move on to the next page.

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## Step 7: Parties.

The next page that you will see is the parties page. This page allows you to enter the appropriate information for all of the parties in the lawsuit. This page also allows for the designation of a party as *pro se*. Additionally, this page requires you designate whether the party is Appellant or Appellee. If the wrong designation is given, the page will prompt you to correct it.

The screenshot shows a web interface for entering party details. At the top, there are navigation tabs: 'Case Information', 'Parties', 'Filings', and 'Summary'. The main heading is 'Enter the Details for the Parties Involved in this Case'. Below this is a table with two columns: 'Party Type' and 'Name'. The first row shows 'Appellant' and 'Pro Se'. Below the table is a red-bordered box containing an 'ADD PARTY' button and a checkbox labeled 'I am this party'. The form below includes a 'PARTY TYPE' dropdown menu, radio buttons for 'Person' (checked) and 'Business', and an 'Attorney' dropdown menu with 'Pro Se' selected. There are input fields for 'First Name\*', 'Middle', and 'Last Name\*'. Below these are fields for 'Country' (set to 'United States of America'), 'Address Line 1', 'Address Line 2', 'City', 'State', 'Zip Code', and 'Phone'. At the bottom left, there is a 'Case Information' button, and at the bottom right, there is a 'Filings' button.

To add in the information of additional or adverse parties, simply click the “Add Party” button once you have finished filling out the information for the current party. If you are filling the information out yourself, clicking the “I am the party” box will fill in all of the information from the information you supplied during registration. If you need to correct any of this information, simply select the appropriate box and edit the information. Clicking “Filings” in the lower right hand corner will take you to the next page.

## Step 8: Filings.

You will now come to the filings page. This page will allow you to file a single document or multiple documents at the same time. For example, one notice of appeal can be filed, or a notice of appeal and an affidavit of indigence can be filed simultaneously. To file multiple documents, fill in all of the appropriate information for the first document, attach the document as the lead document, and click the “Add Another Filing” box to attach the next document. This can be done multiple times to file as many documents as you require. When attaching documents as the lead document, ensure that the file is saved as a .pdf file or it will not upload to the system.

The screenshot displays the 'Enter Filing Details' page for the 6th Court of Appeals. The page is divided into several sections:

- Navigation:** Top bar with 'WORKSPACE', 'MY ACCOUNT', 'HELP', 'ABOUT', and 'LOGOUT'. Below it, a breadcrumb trail shows 'Case Information', 'Parties', 'Filings', and 'Summary'.
- Form Fields:**
  - Select Filing Code\*:** A dropdown menu with 'Brief Not Requesting Oral Argument' selected. There are checkboxes for 'EFile' and 'Service'.
  - Filing Description:** A text field containing 'Appellants Brief in Support of Appeal'.
  - Reference Number:** A text field containing '14-00001'.
  - Documents:**
    - Lead Document\*:** A table with columns for 'Description\*' and 'Security\*'. It contains one entry: 'Appellate Brief 1259.pdf' with 'PUBLIC' security.
    - Attachments:** A section with a 'Click to browse' link.
  - Filing Comments:** A text area.
  - Courtesy Copies:** A text field.
- Fees:**
  - Brief Not Requesting Oral Argument:** A table showing 'Filing Fee' as \$0.00 and 'Total this Filing' as \$0.00.
  - Case Initiation Fee:** \$0.00.
  - Envelope Total:** \$0.00.
- Payment:**
  - Payment Account\*:** '6th Court of Appeals'.
  - Filer Type\*:** 'Not Applicable'.
  - Party Responsible for Fees\*:** A text field.
- Buttons:** 'Parties' (bottom left) and 'Summary' (bottom right, highlighted with a red box).

This page will also keep a running total of all of the costs that are associated with your current filing and will detail where each fee comes from. When you have completed adding all the documents for the particular filing click the “Summary” button to proceed.

## Step 9: Summary

The summary page gives a summary of all of the information and documents you have added to the file over the last three webpages, as well as a total cost of the filing. You should review this page to ensure that all of the information is accurate, correct, and the appropriate documents are attached. Once you have reviewed all of the information, click the “Submit” button to file everything with the court.

The screenshot displays the 'Envelope and Filing Summary' page for a case in the 6th Court of Appeals. The page is divided into several sections:

- Case Information:** Location: 6th Court of Appeals, Case Category: Civil - Other Civil, Case Type: Civil, Date Filed: [blank], Filing Attorney: [blank], Payment Account: 6th Court of Appeals.
- Parties:** A table with columns for Party Type, Name, Address, Phone, and Attorney. One party is listed: Appellant, Pro Se.
- Filings:** A table with columns for Filing Code, Filing Description, Reference Number, and Filing Type. Two filings are listed: 'Brief Not Requesting Oral Argument' (Reference: 14-00001, Type: EFile) and 'Lead Document' (File Name: Appellate Brief 1259.pdf, Status: OK, Security: PUBLIC).
- Fees:** A table showing 'Brief Not Requesting Oral Argument' with a Filing Fee of \$0.00 and a Total this Filing of \$0.00. A Case Initiation Fee of \$0.00 is also shown, resulting in an Envelope Total of \$0.00.
- Payment:** Payment Account\*: 6th Court of Appeals, Filer Type\*: Not Applicable, Party Responsible for Fees\*: [blank].

A red box highlights the 'Submit' button located at the bottom right of the page.

Once you have submitted the file you can return to it anytime by clicking the case in your workspace. Once in the case, additional files or parties can be added.

## Paper Filing

The other option to file documents is to file a paper copy in person or through the mail. This method may be more familiar to some *pro se* litigants. To file in person simply bring the appropriate document, copies, and filing fee to the clerk’s office in the courthouse. However, filing in person does have some drawbacks including printing the

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document in the correct format and meeting a 5:00 P.M. submission time on the day of the deadline.

When filing the document in person make sure that it complies with the following rules:

- Print only one side of the page;
- The paper on which a document is printed should be 8.5 by 11 inches, and white;
- The document should have 1-inch margins;
- The text should be double-spaced;
- A document should be produced in size 14 of a normal font (i.e. Calibri, Cambria, Garamond, Times New Roman, etc.);
- A document should be bound to ensure that it will not lose its cover or fall apart;
  - A paper document should be stapled in the top left-hand corner or bound so it lies flat when open;
  - A paper petition or brief should have a durable front and back cover which cannot be plastic or be red, black, or dark blue;
- The front cover of a document should contain the following:
  - Case style – *Plaintiff v. Defendant*, or *Appellant or Appellee*. The last name of each party would be substituted for each word respectively;
  - Case number;
  - Title of the document being filed;
  - Name of the party filing the document; and
  - The following for the lead party responsible for the filing:
    - Name;

- 
- Mailing address;
  - Telephone number;
  - Fax number (if any); and
  - E-mail address.
- If a party requests oral arguments, ensure that this request also appears on the front cover in the form “**ORAL ARGUMENT REQUESTED.**”

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# FREQUENTLY ASKED QUESTIONS

These questions and answers cover a wide array of the appeal process. These questions will cover the following topics: (1) filing with the court, (2) briefs to the court, (3) motions, (4) oral arguments, (5) appealing a Court of Appeals decision, and (6) miscellaneous issues. If this section or guide does not cover a question, consult the TRAP, visit with an attorney, or visit the website of any Court of Appeals for more information.

## Filing with the Court

### Is there a fee for filing an appeal?

There is a fee to file an appeal as well as several other documents with the court. The

following list outlines the fees and documents they are associated with:

- |  |                     |
|--|---------------------|
| 1. Appeal from a district or county court                                  | \$195.00            |
| 2. Petition for permissive appeal  | \$195.00            |
| 3. Original proceeding   | \$145.00            |
| 4. Administering an oath with sealed certificate of oath                   | \$5.00              |
| 5. Certified copy including certificate and seal certification<br>minimum) | \$1.00/page (5-page |
| 6. Comparing and certifying copy of document<br>minimum)                   | \$1.00/page (5-page |
| 7. Motion for rehearing or for en banc reconsideration                     | \$15.00             |
| 8. Motion not otherwise listed   | \$10.00             |



#### Filing Fee

A sum of money required that must be paid to the court clerk before a document can be accepted unless the litigant is indigent



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9. Exhibit tendered for oral argument

\$25.00

These fees are current as of July 17, 2014, but they may be subject to change. To check the current fees, visit the Court of Appeals website where the document is to be filed or call the appellate court clerk.

### **Where do I file a notice of appeal?**

A party should file a notice of appeal with the clerk of the trial court where the trial took place.

### **How do I file documents with the court?**

A party is encouraged to file all documents electronically, but this is not required. Go to [www.eFileTexas.gov](http://www.eFileTexas.gov) to start the process of electronically filing a document. If a party does not wish to electronically file or does not have the means to do so, one of the following methods is appropriate: (1) delivering the document to the clerk of the court in which the document is to be filed, (2) delivering the document to a justice or judge of the court who is **willing** to accept delivery, or (3) mailing the documents to the court with a post mark of the deadline to file. TRAP 9.2 has more information on all of these methods.

Additionally, unless the court orders otherwise, an electronically filed document **must not contain** any of the following sensitive data:

- Social security number;
- Birth date;

- 
- Home address;
  - The name of any person who was a minor when the underlying suit was filed;
  - Driver's license number;
  - Passport number;
  - Tax identification number or similar government-issued personal identification number; or
  - Bank account number, credit card number, or other financial account number.

A party should replace all sensitive data with the letter “X” in place of each letter. If the document must contain un-redacted sensitive data a party should either notify the clerk, for electronically filed documents, or write “**NOITCE: THIS DOCUMENT CONTAINS SENSITVE DATA,**” for non-electronic copies. See TRAP 9.9 for more information.

### **When I submit a document for filing by mail is it considered filed with the court when it is mailed?**


Parties can use either the United States Postal Service or a commercial delivery service (DSL, Fed Ex, UPS, etc.) to submit written documents. A document that is mailed will be considered timely if it is received by the court within 10 days of the filing deadline. **However, the document must still be postmarked on or before the last day of the filing deadline.** See TRAP 9.2.

### **How should documents be bound?**

One copy of anything filed with the court must be unbound and one-sided (on 8.5”x11”

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paper) and contain no hard covers, tabs, or any other item that would impede the scanning of the document. For all other copies see TRAP 9.4 for the form the documents should conform to.



**Filing Deadline**  
The date that a document must be received by the court. Missing a deadline can result in the dismissal of the case in some cases

### **How do I calculate the time for filing documents with the clerk's office?**

Generally, the time for filing documents will begin the day after a trial court enters its final judgment, grants a motion, or takes any other action that can be appealed. Time is then computed from that day forward including Saturday and Sunday.

### **What if my filing deadline falls on a Saturday, a Sunday, or a legal holiday, when should I file to make sure my document is considered timely?**

If the filing deadline falls on one of the above dates, the deadline for filing extends to the end of the next business day that the clerk's office is open.

### **What will happen if the document I want to file is submitted late?**

If the deadline missed is the deadline to file a notice of appeal, the appeal will likely be dismissed by the appellate court. If the deadline missed is the deadline to file an appellant's brief, unless the a party has filed a motion for extension of time before the filing deadline or other rules provide for an implied extension of time, the appellate court may dismiss the appeal. In other cases such as a failure to timely file an appellee's

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brief, the court may proceed with the appeal without the submission of the document. You will likely receive notices from the appellate court notifying you of missed deadlines and the opportunity to cure your mistake if any is given.

## **Briefs to the Court**

### **When must an appellant's brief be filed?**

An appellant should file their brief within 30 days after: (1) the date the clerk's record was filed, or (2) the date the reporter's record was filed, whichever of these two is later. TRAP 38.6(a).

### **When must an appellee's brief be filed?**

An appellee's brief must be filed within 30 days after the date the appellant's brief was filed. TRAP 38.6(b).

### **As an appellant, may I file a brief in response to the appellee's brief?**

This is allowed and called a reply brief. An appellant has 20 days after the appellee files their brief to file a reply brief. TRAP 38.6(c).

### **How many pages can a brief be?**

For any brief filed with the court, the brief should not be more than 15,000 words if computer-generated, and 50 pages if not. Additionally, in a civil case the total length of all briefs filed must not exceed 27,000 words if computer-generated, and 90 pages if not. TRAP 9.4(i).

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## Can I exceed the page limit?

No, if the appellate court receives a nonconforming document it has the power to strike the document or allow the nonconforming party to resubmit the document. If your case is extraordinary and cannot be adequately briefed within the page limits, you may file a motion with the appellate court requesting permission to file a brief that exceeds the page limit. You must inform the court how long the brief will be and must obtain a favorable ruling on the motion before filing a brief that exceeds page or word limitations.

## What do I do if I need an extension of time to file my brief?

A motion for extension of time must be submitted to the court; at that point, it **may** decide to grant the extension. Deadline for a responsive brief does not run until the party given an extension of time files its brief with the appellate court.

## How many copies of a brief must be filed?

A party who does not electronically file a brief should file the original brief and 3 additional copies.

## What is the proper way to cite to the record, transcript, exhibits, statutes, and appellate court decisions?

The following is a list of ways to cite to the record or other legal authority.

1. Single Volume Clerk's Record – (CR1)



### Citation (Cite)

A reference to a legal precedent or authority, such as a case, statute, or treatise, which either affirms or challenges a given position

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2. Multi-Volume Clerk's Record – (2CR4)
  3. Single Volume Reporter's Record (transcript of proceeding)– (RR123)
  4. Multi-Volume Reporter's Record – (2RR123)
  5. Exhibit - (Ex. 1)
  6. Texas Statutory Code – TEX. <SUBJECT> CODE ANN. § 1-23 (<year>)
  7. Texas Appellate Court Decision – *Plaintiff v. Defendant*, 12 S.W.3d 345 (Tex. App.— <Appellate Court>, <year>)
  8. Supreme Court of the United States Decision – *Plaintiff v. Defendant*, 12 U.S. 345 (<year>).
  9. Texas Rules of Appellate Procedure – TEX. R. APP. P. 1
  10. Texas Constitution – TEX. CONST. art. I, § 2

For any other questions on how to cite, visit <http://www.law.cornell.edu/citation/>.

## **Motions**

**If I have a request relating to my appeal I want the court to grant while the appeal is still pending, how do I make such a request?**

The proper way to make a request to the court is to put the request in the form of a motion. E.g., a motion for extension of time to file appellant's brief.

**How many copies of motions are required?**

A party who does not electronically file a motion must file the original motion and 1 copy of any other motion or 3 copies of a motion for rehearing.

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## **Oral Arguments**

### **Am I entitled to argue my case before the Court of Appeals?**

TRAP 39.1 states that any party who has filed a brief and who has timely requested oral argument may argue the case to the court unless the court determines it is unnecessary for any of the following reasons: (1) the appeal is frivolous, (2) the issue(s) have already been conclusively decided, or (3) oral arguments would not significantly aid the decision. For a party to request an oral argument, the party must note that request on the front cover of the brief. TRAP 39.7. The statement “**ORAL ARGUMENT REQUESTED**” is a generally accepted way to accomplish this task. Additionally, a statement regarding why oral argument should or should not be permitted must be added to the brief.

### **How will I receive notice of my case being set for oral argument?**

Each party will receive notice of a decision for or against oral arguments at least 21 days before oral arguments would take place. TRAP 39.8

### **May I present new exhibits or testify about my case during oral argument?**

No, oral arguments are a time to discuss why the trial court erred in its opinion. The only information a party can argue during oral arguments is that information that was present in the record. This rule also applies for briefs; the only issues a party may complain about in a brief are those that are contained in the record. TRAP 39.2.

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## **Appealing a Court of Appeals Decision**

### **Can I appeal the decision of the Court of Appeals to the Supreme Court of Texas or Texas Court of Criminal Appeals?**

Yes, this can be done by filing a petition for review with the Supreme Court of Texas or the Texas Court of Criminal Appeals. However, the Supreme Court of Texas and Texas Court of Criminal Appeal have discretionary power to hear cases and are under no obligation to grant any of the petitions for review they receive.

### **What is a petition for review?**

A petition for review is a formal request for the Supreme Court of Texas or the Texas Court of Criminal Appeals to take up the case and review the decision of the appellate court. Unlike a notice of appeal, a petition for review makes a brief argument for why the case should be heard by the higher courts. A petition for review includes the following sections:

1. Identity of Parties and Counsel
2. Table of Contents
3. Index of Authorities
4. Statement of the Case
5. Statement of Jurisdiction
6. Issues Presented
7. Statement of Facts
8. Summary of the Argument



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9. Argument

10. Prayer

11. Appendix

A detailed explanation of what needs to be found in each of these sections can be found at TRAP 53.2.

### **How long after the decision of the Court of Appeals do I have to file a petition of review?**

A petition must be filed within 30 days of: (1) the day the appellate court's judgment was rendered, or (2) the day of the last timely motion for rehearing. TRAP 68.2.

### **Can I file a writ of certiorari with the Supreme Court of the United States?**

No, a writ of certiorari can only be filed with the clerk of the Supreme Court of the United States after entry of a final judgment by a state court of last resort. This means that the Supreme Court of Texas or Texas Court of Criminal Appeals would have to enter a final judgment before you can file a writ of certiorari. More information on appealing to the Supreme Court of the United States can be found at

<http://www.supremecourt.gov/casehand/guideforifpcases.pdf>

### **Miscellaneous Questions**

**Is it possible for me to speak directly to a judge or a member of his personal staff about my case?**

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No. All parties and their counsel, including parties appearing *pro se*, are prohibited from all private communication with the judge or judge's staff. Any communication must be handled through the clerk's office.

### **What information can the clerk's office give me?**

The court can give provide the following information:

1. The court can answer general questions about how the court works;
2. The court can give general guidance on court rules and procedures;
3. The court can provide any forms or instructions; or
4. Direct a party to a resource that has this information;

However, the court cannot provide any information that directly affects the substance of a case. This includes:

1. Whether to appeal a case;
2. What motions to file;
3. How a case will do in court; or
4. Any form of research.

### **Are there any forms for pro se litigants?**

There are general guideline forms attached at the end of this guide. Another place a party can look is [O'Connor's Texas Civil Appeal](#) or [O'Connor's Texas Criminal Code](#) for general forms that can assist you when preparing your case. Both of these books can be found in the legal libraries of universities or in the libraries of all the courts of

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appeals. Additionally, some forms can be found on the website of each Court of Appeals.

### **What are the clerk's offices business hours?**

Every clerk's office is open Monday to Friday from 8:00 A.M. to 5:00 P.M.

### **What are some of the common mistakes that are made when filing**

The list below contains common problems that have been found with *pro se* submissions to the court. This list is not exhaustive but should give you an idea of what to look out for when preparing or filing a document with the courts.

#### **-Lack of legal argument/support**

When filing a brief or other document with the court it is important to support every argument with legal authority. It is not enough for a party simply to state why it feels the lower court was wrong in its decision; the party must support the argument with legal authority. For example, stating the trial court decision is unfair because it punishes you is not enough. Instead a proper legal argument would state the trial court decision is incorrect because it does not comply with X case, Y statute, or some other legal authority. Additionally, it is important to support all legal arguments with a citation to the source of the authority.

#### **-Failure to complain about a trial court's error**

In addition to making a legal argument, ensure that the error or problem being argued

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relates to an actual act or omission committed by the trial court. For example, a trial court error would be failure to give the correct jury charge or failure to admit the appropriate evidence. Note: Generally, appellate courts cannot address issues that were not brought to the attention of the trial court.

**-Failure to file all parts of a document**

When filing a document with the appellate court, it is essential that it contain all of the necessary parts required by the TRAP. As previously stated a *pro se* litigant is held to the same standards as practicing attorneys, failure to comply with the rules set forth by the TRAP is not an option. If a required part is missing from a document, it can lead to a letter for resubmission or waiver of the issue or request.

**-Illegible handwriting**

There is no requirement that a document be typed in order to be filed with the court. However, a handwritten document must be legible. It is not the responsibility of the court to interpret an illegible document. If the court cannot read a party's handwriting there is the possibility that issues will be waived.

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# **G**LOSSARY OF TERMS

## **Affidavit**

A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public.

## **Appeal**

To seek review (from a lower court's decision) by a higher court.

## **Appellant**

The party that is seeking review of the trial court's decision by bringing the appeal.

## **Appellee**

The party that is adverse to the appellant who will argue that the trial court's judgment is proper.

## **Appendix**

Additional documents attached to the end of a brief or motion.

## **Argument**

The section of a brief that attempts to persuade the court. This section applies legal authority to the facts of the case to support the party's position.

## **Brief**

A statement containing legal arguments. On appeal, a document prepared as the basis for arguing the case, consisting of legal and factual arguments.

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## **Caption**

The introductory part of a court document that states the names of the parties, the name of the court, the docket or file number, and a description of the document.

## **Case/Cause Name**

The name assigned to a case. Generally in the form of *Plaintiff v. Defendant*. E.g., *Doe v. The State of Texas*.

## **Case/Cause Number**

The number assigned to a lawsuit when it is filed with the clerk of the court. Each case has a distinct number that distinguishes it from all other suits filed within the court's jurisdiction.

## **Certificate of Service**

A section of a motion or pleading filed with the court in which the filing party certifies to the court that a copy has been mailed to or otherwise served on all parties in the lawsuit.

## **Citation (Cite)**

A reference to a legal precedent or authority, such as a case, statute, or treatise, which either affirms or challenges a given position. Cites are generally found in the form, *Plaintiff v. Defendant*, 123 S.W.3d 456 (Tex. 2007).

## **Civil Case**

A case brought between two citizens as opposed to being brought by a governmental entity.

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## **Docket**

A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case.

## **File**

To deliver a legal document to the court clerk or record custodian for placement into the official record.

## **Filing Deadline**

The date a document must be received by the court.

## **Findings of Fact and Conclusions of Law**

A trial judge's findings in a bench trial or findings entered by a judge in ruling on certain trial motions.

## **Indigent**

A party who could not pay even if they were to make a good faith effort.

## **Judgment**

A court's final decision of the rights and obligation of the parties.

## **Jurisdiction**

A court's power to decide a case or issue a decree.

## **Legal Authority**

A legal source, such as a case, statute, or treatise that is cited in support of a position.

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## **Motion**

A written or oral application requesting a court to make a specified ruling or order.

## **Notice of Appeal**

A document filed with a court and served on other parties, stating an intention to appeal a trial court's judgment or order.

## **Opinion**

A court's written statement explaining its decision in a given case.

## **Oral Argument**

An advocate's spoken presentation before an appellate court supporting or opposing the legal relief at issue.

## **Original (Original Document)**

A document with the original signature from which copies are made. Generally, the first document filed with the court.

## **Petitioner**

The party petitioning the Supreme Court of Texas or the Court of Criminal Appeals of Texas for review.

## **Pro Bono**

Work involving uncompensated legal services performed especially for the public good.

## **Pro Se**

A Latin phrase meaning "for yourself." Any party that appears before the court without



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legal counsel.

## **Procedural Background**

The history of events that took place to get the case to its current state.

## **Record**

The official report of the proceedings in a case, including the filed papers, a verbatim (word for word) transcript of the trial or hearing, and tangible exhibits.

- **Clerk's Record**
  - Includes the written documents filed with and issued by the lower court.
- **Reporter's Record**
  - A verbatim transcript of the trial as well as any tangible exhibits that were presented at trial.

## **Relief**

The remedy that a party is seeking from the court. For example, fifteen more days to file a brief.

## **Remedy**

The means of enforcing a right, or preventing or redressing a wrong.

## **Scan Ready**

A document that is one sided, unbound, and un-tabbed that can be easily scanned.

## **Sensitive Data**

Any data that gives away personal information that could possibly be inappropriately used. Examples include the following: passport number, social security number, bank

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account number, birth date, or the name of anyone who is a minor.

### **Statement of the Case**

A statement of the nature of the case (e.g. whether it is a suit for damages or one involving a murder), the course of the proceedings, and the trial court's decision in the case. The statement of the case should be supported by and cite to the record.

### **Statement of Facts**

A statement of the facts of a case that contains no legal or factual arguments. The statement of facts should be supported by and cite to the court record.

### **Table of Authorities**

An alphabetical listing of the authorities (e.g. cases or statutes) cited in a brief.

### **Texas Rules of Appellate Procedure**

The guidelines and rules governing the appellate process.

### **Waiver**

The voluntary abandonment – express or implied – of a legal right, argument, or advantage.

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## JUDICIAL RESOURCES

There are many services dedicated to assisting people find legal services and legal advice. Below are just some of the organizations that can assist you and their contact information:

1. Lone Star Legal Aid – [www.lonestartlegal.org](http://www.lonestartlegal.org) , (800)-733-8394
2. State Bar of Texas – [www.texasbar.com](http://www.texasbar.com), (800)-252-9690
3. Texas Advocacy Project (civil issues only) – [www.texasadvocacyproject.org](http://www.texasadvocacyproject.org)
  - a. Family Violence – (800)-374-4673
  - b. Family Law – (800)-777-3247
  - c. Sexual Assault – (888)-296-7233
  - d. Technical Advocacy – (888)-325-7233
4. Texas Court Help – [www.texascourthelp.org](http://www.texascourthelp.org)
5. Texas Law Help – [www.texaslawhelp.org](http://www.texaslawhelp.org)

In addition to the above resources, some local libraries, courts, and online resources will have judicial resources you can go and visit. These include:

1. Google Scholar – [www.scholar.google.com](http://www.scholar.google.com)
2. Library of Congress (Federal Legislation) – [www.loc.gov](http://www.loc.gov)
3. Public Library of Law (Cases from 1997 to present) – [www.plol.org](http://www.plol.org)
4. Courts of Appeals – [www.courts.state.tx.us](http://www.courts.state.tx.us)
5. Texas Courts Online – [www.search.txcourts.gov](http://www.search.txcourts.gov)

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# FORMS

The following forms are samples of some of the documents mentioned in this guide. These samples are mere guidelines. Each document should be personalized with the information pertaining to your appeal. You must be aware that the TEX. R. APP. P. are much more complete than this guide and you must not solely rely on this guide in pursuing your appeal. *Pro se* litigants proceed at their own risk. We strongly suggest that you hire a licensed attorney to pursue your appeal.

## Attachment 1: Notice of Appeal

**CAUSE NO. 15-00001**

<b>JOHN DOE,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>ANYTOWN COUNTY, TEXAS</b>
	§	
<b>JANE SMITH</b>	§	
	§	
<b>Defendant.</b>	§	<b>425TH JUDICIAL DISTRICT</b>

### NOTICE OF APPEAL

This Notice of Appeal is filed by John Doe, Appellant, a party to this proceeding who seeks to alter the trial court's <List Judgment or other Appealable Order>.

1. The trial court, cause number, and style of this case are shown in the caption above.
2. The <Appealable Order by Trial Court> was signed on <Date of Signature>.



3. John Does desires to appeal all portions of the judgment.
4. This appeal is being taken to the 15th Court of Appeals, in Anytown, Texas.
5. This notice of appeal is being filed by John Doe.

Respectfully submitted,

John Doe  
456 Main Street  
Anytown, Texas 12345  
Tel: (123) 456-7890

By: <Signature>

\*Attach a certificate of service.



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**Attachment 2: Brief**

**NO 15-00001**

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IN THE  
FIFTEENTH COURT OF APPEALS  
AT ANYTOWN

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Doe v. Smith

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Original Proceeding from the 425th District Court,  
The Honorable Joe Johnson, Presiding

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Appellant's Brief on the Merits

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**ORAL ARGUMENT REQUESTED**

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John Doe  
456 Main Street  
Anytown, Texas 12345  
Telephone: (123) 456-7890

***Pro Se Litigant***

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## IDENTITY OF PARTIES AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 38.1(a), appellant presents the following list of all parties and names and addresses of its counsel:

**Appellant/Plaintiff:**

John Doe

**Counsel:**

John Doe  
456 Main Street  
Anytown, Texas 12345  
Telephone: (123) 456-7890

**Respondent:**

The Honorable Joe Johnson  
425th Judicial District Court  
Anytown Courts Building  
789 Main Street  
Anytown, Texas 12345

**Appellee/Defendant:**

Jane Smith

**Counsel:**

Julie Jones  
Texas State Bar No. 12345678  
The Jones Law Firm  
123 Main Street  
Anytown, Texas 12345  
Telephone: (123) 123-4567

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## TABLE OF AUTHORITIES

### Cases

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<i>Miller v. Wilson</i> , 456 S.W.2d 654 (Tex. 2000) .....	79

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## STATEMENT OF THE CASE

**Nature of the Case:** Appellant/Plaintiff John Doe brought a civil trespass cause of action against Appellee/Defendant Jane Smith arising out of damage his garden suffered during a trespass by Smith on January 1, 2014. (CR1). Appellant alleges Appellee consciously disregarded his “No Trespassing” signs and damaged his garden. (CR2).

**Respondent:** Honorable Jim Johnson, 425th Judicial District Court, Anytown County, Texas.

**Respondent’s Action:** February 1, 2014, the trial court entered a final, take-nothing judgment in favor of Appellee. (CR150, Appx.1). The trial court also awarded appellee attorney’s fees. (CR150).

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## STATEMENT REGARDING ORAL ARGUMENTS

This case raises significant issues related to the trial court's erroneous exclusion of critical evidence and the factual sufficiency of the evidence presented in relation to the rule set forth in *Brown v. Davis*, 123 S.W.2d 321, 325 (Tex. 2002). The inclusion of oral arguments will significantly aid the decision of this Court.

\*A proper statement regarding oral arguments will have more detail and legal support (cases, statutes, etc.) for each issue that the party deems necessary for oral arguments. See page 53 for more information on oral arguments.

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## ISSUES PRESENTED

1. Did the trial court err in excluding critical evidence presented at trial?
2. Is there factually sufficient evidence to support the judgment of the trial court?

\*There will be additional questions for each issue that a brief presents.

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## STATEMENT OF FACTS

On January 1, 2014, Jane Smith (Appellee) entered the property of John Doe (Appellant) without his permission and destroyed his prize-winning garden. (CR2). Before the incident, the Appellant received a letter from Appellee, stating that she was going to come over and destroy his garden for beating her in this year's gardening competition. (RR25). Appellant filed suit in the 425th District Court in Anytown County against Appellee claiming she had trespassed and maliciously destroyed his property. (CR1).

On February 1, 2014, the trial court heard the case without a jury. (RR1) During the hearing, Appellant presented both the letter by Appellee and video recording of Appellee trampling the garden. (RR34;Ex.3-4). The trial court excluded this critical evidence and entered a take-nothing judgment in favor of Appellee. (CR150;Appx.1).

Appellant has appealed to the Fifteenth Court of Appeals at Anytown asking that the Appellate Court overturn the trial court's judgment.

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## SUMMARY OF THE ARGUMENT

The trial judge erred in excluding and failing to consider critical evidence that was presented at trial. The exclusion of the evidence is contradictory to the rulings established by the Supreme Court of Texas in *Miller v. Wilson* and in *Brown v. Davis*. *Brown v. Davis*, 123 S.W.3d 321, 325 (Tex. 2002); *Miller v. Wilson*, 456 S.W.3d 654, 657 (Tex. 2000). Because the trial court should have considered the evidence, the trial court's decision is so contrary to the overwhelming weight of this evidence as to be clearly wrong and unjust. Thus, the trial court's judgment is not supported by factually sufficient evidence. For this reason, the case should be reversed and remanded to the trial court for further consideration.

\*In cases with several points of error, each issue will be discussed along with supporting legal authority.

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## ARGUMENT

### **Did the trial court err in excluding critical evidence?**

This evidence presented at trial was (1) a letter sent by the Appellee that threatened to destroy Appellant's garden, and (2) a video recording of Appellee destroying the garden on January 1, 2014. At trial, the court excluded both exhibits.

The Supreme Court of Texas in *Brown v. Davis* held that a letter in a trespass case is admissible and is sufficient to prove the intent of another party. *Brown*, 123 S.W.2d at 323. In *Miller v. Wilson*, the Supreme Court of Texas found that a video recording was an appropriate method for ensuring the security of one's property and should be admissible as evidence. *Miller*, 456 S.W.2d at 659. Furthermore, the Supreme Court of Texas found in both cases that it was an abuse of discretion not to consider this evidence at trial if properly presented. *Brown*, 123 S.W.2d at 325; *Id.* at 661.

In the findings of fact and conclusions of law, the trial court clearly stated that it did not regard either the letter or the video recording as admissible evidence. Because the Supreme Court of Texas has stated a trial court must consider these two mediums, when properly presented to it, the trial court erred by disregarding these items.

The Supreme Court of Texas states that it is an abuse of discretion not to properly consider evidence at trial. Because the trial court did not consider the letter and video recording, it abused its discretion and adversely affected the Appellant.

### **Is there factually sufficient evidence to support the judgment of the trial court?**

...

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## PRAYER

Appellant, John Doe, respectfully, for the reasons stated above, asks the Court to reverse the judgment of the trial court and remand the case for a new trial.



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## APPENDIX

Tab 1: Final Judgment Order by the Trial Court

\*Order would be attached here.

Tab 2: Trial Court's Findings of Fact and Conclusions of Law

\*Findings of fact and conclusions of law would be attached here.

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**Attachment 3: Certificate of Service**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on <date>, a copy of the foregoing response was served on the following counsel for <Appellee's name/Appellant's name>:

Julie Jones

The Jones Law Firm

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