SUPREME COURT OF TEXAS
INTERNAL OPERATING PROCEDURES

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I. INTRODUCTION

The purpose of this paper is to provide an in-depth examination of the internal operating procedures of the Supreme Court of Texas. Like most continuing legal education articles, this article relies heavily on other articles written on this same topic in previous years. Much of this article is taken verbatim from these previous articles, but the article is updated with new information about the Court's website, procedures, electronic briefs and applicable rules. The author is indebted to the staff members of the Supreme Court of Texas and appellate practitioners who contributed to these previous articles and who provided their insights and comments for this article. In particular, the author wishes to thank Doug Alexander and Andrew Weber, for their contributions to this article and past articles on this same subject.

This article is intended to assist attorneys and others who wish to understand how the Supreme Court of Texas operates. Much of the information contained in this article can be found by carefully reading the Texas Rules of Appellate Procedure—particularly Rules 52 through 65, which govern proceedings in the Supreme Court of Texas. One should also be thoroughly familiar with Texas Rule of Appellate Procedure 9 which sets forth important rules regarding signing, filing, form, and service of documents in all Texas appellate courts. For information regarding the filing of motions, be sure to read Texas Rule of Appellate Procedure 10, especially if you are filing a motion for extension of time as the rule requires particular information for these motions. *See* TEX. R. APP. P. 10.5(b). Finally, the Rules of Appellate Procedure now require all attorneys to file documents electronically. You should read the Court's order amending the Rules of Appellate Procedure before filing any document with the Court.[1] *See* Appendix A.

Of course the rules and decisions of the courts trump the author's statements and opinions and you must ultimately be guided by the rules and the decisions of the courts.

[1] Misc. Docket No. 13-9165, Order Adopting Texas Rule of Civil Procedure 21c and Amendments to Texas Rules of Civil Procedure 4, 21, 21a, 45, 57, and 502; Texas Rules of Appellate Procedure 6,9, and 48; and the Supreme Court Order Directing the Form of the Appellate Record..

II. SEEKING HELP AND GETTING INFORMATION

A. The Clerk's Office

The Supreme Court of Texas provides several different resources for persons seeking help in understanding the Court's procedures. For example, the Court employs other attorneys besides the Clerk, such as the Staff Attorney for Public Information and the Rules Attorney, who may be able to answer any questions you might have about the Court's procedures.

But Texas Rule of Appellate Procedure 9.6 provides that parties and counsel may communicate with the appellate court about a case only through the Clerk. If you are a party or counsel to a case, you should not contact anyone at the Court besides the Clerk's Office about your case.

The Clerk's Office can be reached at (512) 463-1312. If you need immediate relief from a lower court order and intend to file a motion for stay, you should contact the Clerk's Office as soon as possible after the need for relief arises. The Court does not accept filings by facsimile, but if you call the Clerk's Office you will be instructed on the Court's procedures in the event that immediate relief is needed.

B. The Court's Website

With the assistance of the Office of Court Administration ("OCA"), the Supreme Court of Texas strives to provide a helpful and user-friendly website. The Clerk and his staff dedicate a great deal of time to suggesting and implementing changes to the Court's website. The address of the Court's website is http://www.txcourts.gov/supreme/

1. Frequently Asked Questions

The Court's website answers many frequently asked questions regarding the amount of filing fees, the Court's mailing address, and other basic questions. Please check the frequently asked questions page for the answer to your questions before calling the Clerk's Office. A link to the frequently asked questions page (FAQ) can be found on the Court's home page on the left-hand side of the page in the Supreme Court Home section of the page.[2]

If you are an attorney, please educate and inform your staff about this resource. All of our clerks' offices spend a great deal of time answering telephone calls about basic information that can be found on the courts' websites. Please help our clerks' offices run more efficiently by training your staff to use the available internet resources.

[2] http://www.txcourts.gov/supreme/frequently-asked-questions/

2. The Clerk's Page

The Clerk of the Supreme Court of Texas maintains a separate web page.[3][4] One can find a link to this page on the left-hand side of the Court's home page—under Supreme Court Home>About the Court>Clerk's Office. The Clerk's page provides information about electronic filing, mailing addresses, filing fees, and the telephone number for the Clerk's Office.

The Clerk of the Supreme Court also serves as the Clerk of the Multidistrict Litigation Panel ("MDL Panel"). The Clerk maintains a web page devoted exclusively to the MDL panel and a link to that web page can be found on the Clerk's home page. [5]

3. Electronic Briefs

Perhaps the most useful page to both novices and experienced appellate practitioners alike is the electronic briefs page.[6] In 2002, the Court began asking parties to submit electronic copies of the petition, response, reply, and all briefs in electronic format for posting on the Court's website when the Court requested briefs on the merits. On February 15, 2010, the Court issued an order requiring electronic courtesy copies of all petitions, responses, replies, briefs on the merits, motions for rehearing, and amicus letters to be e-mailed to the Clerk the same day that the paper version is filed. This new order also imposed redaction requirements because all of these documents are posted on the Court's website. The Court promulgated rules permitting electronic filing of all documents effective March 15, 2011. And electronic filing became mandatory for attorneys on September 12, 2011. Through the Texas Appeals Management and E-Filing System (TAMES), the Court now provides access to almost all of the documents filed with the Court.

If you have questions about the proper format for appellate briefs, this is a good place to find examples. The electronic briefs page is also a good place to keep track of the issues that the Court is reviewing.

4. Casemail

Once a number is assigned to a petition or other initial filing, one should register to receive case mail from the Court. And lead counsel is now required to register for Casemail. The Court's automated information system will send registrants e-mails regarding any filings or other activity, including calendar settings, on the Court's docket sheet for that matter. Of course, counsel should not rely exclusively on this service and should always double-check any due dates and calendar those dates independently of this system. The system can also provide notices of new opinions.

The Court's website contains information on registering to receive Casemail (see the Casemail links on the left-hand side). Once registered with a user name and password, counsel may sign up to receive opinion notices in any appellate court in Texas, and counsel may elect to receive an e-mail notice for all events and calendars in any case in those courts. Though one may view a list of all watched cases from one webpage, and may delete any watched case from that page, one must initially go to a particular case in order to elect to receive Casemail on that case.

5. The Court Calendar

The Court provides a detailed calendar on its website listing the dates that the Court will discuss cases in conference and hear oral arguments.[7] The calendar allows you to click on events to view more detailed information. You can also download events to your Microsoft Outlook calendar or Apple iCal calendar.

The Clerk maintains the online calendar and adds new events as appropriate. An RSS feed is available for the calendar.

Mastering the Court's internal operating procedures will allow you to use the Court's calendar to predict when to expect the Court to take action in your case, or other cases that you are watching. Using what you know about the Court's calendar and the internal operating procedures can also help provide insight into whether the Court is interested in your case.

6. The Rules Page

Free copies of the Rules of Appellate Procedure, the Rules of Civil Procedure, the Rules of Evidence, and many other rules and standards are available on the rules page.[8]

7. Oral Argument Video and Audio Recordings

On March 12, 2007, the Supreme Court of Texas and St. Mary's University School of Law began broadcasting oral arguments live over the internet. The State Bar of Texas assumed responsibility for webcasting oral arguments in September, 2012. All of these oral argument videos are available on a web page maintained by the State Bar of Texas for the

[3]

[4] http://www.txcourts.gov/supreme/about-the-court/clerks-office.aspx

[5] http://www.txcourts.gov/courts/overview/about-texas-courts/multi-district-litigation-panel.aspx

[6] http://www.search.txcourts.gov/ebriefs.aspx?coa=cossup

[7] http://www.txcourts.gov/supreme/court-calendar.aspx

[8] http://www.txcourts.gov/rules-forms/rules-standards.aspx

Court.[9] There is also a link to oral argument videos on the Court's web page.

In the past, the Clerk's Office posted audio recordings of all oral arguments, but discontinued this practice in September 2012. Several years ago, the Clerk's Office converted about twenty years of audio cassette recordings of oral arguments to digital format and made them available online. No other state appellate court has as many oral argument recordings available on the internet.

In addition, transcripts of oral arguments are available on the docket page for the cases. Transcripts of oral arguments are usually posted three to four weeks after the argument. Westlaw provides the transcripts to the Court and also maintains its own database of searchable transcripts, which are linked to the video recordings in Westlaw's database. The transcripts are available for free on the Court's website, but Westlaw charges for using its oral arguments database.

For cases that have been argued, the transcript, audio recording, and link to the oral argument video are all attached to the oral argument event on the docket pages for those cases.

C. The Rules Attorney

The Court employs a Staff Attorney for Rules (aka "The Rules Attorney") who works exclusively on creating, revising, and amending Texas court rules. The Rules Attorney's phone number is published on the website's rules page. *See* The Rules Page, Section B, 6 above. One may contact the Rules Attorney to discuss questions regarding the rules and procedure,ut the Rules Attorney cannot discuss particular cases with parties or counsel or give legal advice. *See* TEX. R. APP. P. 9.6.

D. The Staff Attorney for Public Information

The Court employs a Staff Attorney for Public Information to assist the Court in communicating with the press, the Bar, and the general public. Among other things, the Staff Attorney for Public Information disseminates a weekly e-mail to a group e-mail list containing the Court's orders and opinions and prepares case summaries for cases that have been set for oral argument. As with all the Court's staff attorneys, the Staff Attorney for Public Information cannot give you legal advice. Parties and counsel to a case should not contact this staff attorney, or any other staff attorney, to answer questions about a particular case. *See* TEX. R. APP. P. 9.6.

III. FILING DOCUMENTS WITH THE COURT

A. Electronic Filing

Electronic filing became mandatory for attorneys at the Supreme Court in September, 2011. To file documents electronically with the Court, go to the eFileTexas.gov. If you don't already have an Electronic Filing Service Provider ("EFSP") who will help you file documents electronically, you can sign up with one after reading about the different services they provide. The EFSP will be your interface for filing documents through eFileTexas, which runs the Electronic Filing Manager ("EFM"). Think of the EFSP as the courier and the EFM as the central post office. The EFSP sends the document to the EFM and the EFM sends the document to the Clerk.

Be sure to read the Texas Rule of Appellate Procedure 9, especially paragraph (j), before filing. You should in particular be aware of the following requirements:

- Petitions, briefs and other original filings must be converted directly to PDF;
- Appendix materials should also be converted directly to PDF and should only be scanned when necessary;
- Appendix materials must be bookmarked and included as part of the same computer file as the document they accompany;
- Personal information such as minors' names, dates of birth, social security numbers, bank account numbers, and other sensitive information must be redacted;
- A document will be considered timely filed if it is filed before midnight (in the Court's time zone) on the day that it is due;
- You must serve the document on opposing counsel electronically either through the electronic filing system or by e-mail if opposing counsel is not registered with the system;
- Lead counsel must register to receive notices about the case through Casemail on the Court's website;
- You must provide the State Bar of Texas with an electronic service address through your online State Bar profile page..

Once you have successfully e-filed and e-served your documents, you are done. You no longer need to send paper copies to the Court.

[9] http://www.texasbarcle.com/CLE/TSC.asp

B. Filing by Mail

Attorneys may not file by mail. If you are not an attorney, you may still file by mail if you do not want to use the electronic filing system.

Rule 9.2(b)(1) is frequently referred to as the "mailbox rule." Under this rule, you may file the initial petition for review or motion for extension of time to file the petition for review by United States Postal Service first class, express, registered, or certified mail. You must deposit the document in the mail on or before the due date. If you are relying on the mail box rule for timely filing, it is a good idea to obtain a receipt of certificate of mailing from the post office or a receipt endorsed by a commercial delivery service showing the date the document was mailed. Tex. R. App. P. 9.2(b)(2)(B), (C).

In addition to the foregoing, to be timely filed under the mail box rule, the document must actually be received within ten days. One should also check to make sure that Clerk receives the filing within ten days after you mailed the document. The failure of the document to arrive within ten days can be fatal to your reliance on the mail box rule. *See Stokes v. Abderdeen Ins. Co*., 917 S.W.2d 267, 268 (Tex. 1996) ("The clerk must still receive the documents within 10 days to perfect the filings.").

C. Mailing addresses

When sending documents through the United States Postal Service, address your package to:

Mr. Blake A. Hawthorne
Clerk, Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Federal Express, UPS, and other overnight delivery services require a physical address. When using a courier service, address your package to:

Mr. Blake A. Hawthorne
Clerk, Supreme Court of Texas
201 W. 14th Street, Room 104
Austin, Texas 78701

D. Filing Fees

If you are filing electronically, fees are collected through the electronic filing system using a credit card.

If you are not an attorney and are filing by mail, do not forget to include any applicable filing fees with your document. Failure to include your filing fee will delay the processing of your case. The Clerk's Office will call to request missing fees. If fees are not received immediately, the Clerk's Office will send you a letter stating that appropriate action, including possible dismissal of your case, will be taken if you do not pay the fee within a specified time. If fees remain unpaid, the Clerk will circulate a memo to the Court recommending dismissal for failure to pay the required fees. Checks should be made payable to Clerk, Supreme Court of Texas.

The following fees are required for filings in the Supreme Court of Texas:

Petition for Review	$155.00
Additional Fee if Granted	$75.00
Motion for Extension of Time	$10.00
Petition for Writ of Mandamus, Habeas Corpus, Prohibition, Injunction and other original proceedings	$155.00
Motion for Rehearing	$15.00
Miscellaneous Motions (not covered above or in Tex. Gov't Code § 51.05)	$10.00
Exhibits tendered for argument	$25.00
Certified Question from Federal courts	$180.00
Direct Appeal (case appealed directly to the Texas Supreme Court from a state district court)	$205.00
Any other proceeding filed in the Supreme Court of Texas	$180.00

E. Emergencies

If you need relief within the next ten business days, you should call the Clerk's Office and inform them that you will be filing a motion for emergency or temporary relief. The phone number is (512) 463-1312. You will receive instructions on how to e-mail your documents to the Clerk and Chief Deputy Clerk so that the Staff Attorney for Original Proceedings (aka the Mandamus Attorney) can begin reviewing your documents. The Mandamus Attorney will usually decide when to circulate the documents to the Court.

Although you may be instructed to e-mail your documents to the Clerk's Office, e-mailing the documents is not an accepted means of filing documents with the Court. You must still file the documents through the e-filing system if you are an attorney, or, if you are not an attorney, you may file them by mail or commercial delivery service.

IV. PETITIONS FOR REVIEW

The petition for review is the primary means by which one usually seeks review of the decision of a court of appeals. Before filing a petition for review, one should be thoroughly familiar with the provisions of Rule 53. Rule 53 sets out the necessary contents for a petition for review, the page limits, and the required appendix materials. One should also be thoroughly familiar with Rule 9 which establishes word and page limits, margins, font sizes, and other format requirements. Knowing these rules will help get you past the Clerk's Office review of your petition and avoid having your petition struck for non-compliance.

A. Clerk's Office Review and Data Input

The deputy clerks review incoming filings to determine whether they comply with the rules governing the form and content of the documents. The Clerk is authorized by the Court to strike nonconforming documents. If the Clerk determines that the document should be struck, the document may be returned for correction through the e-filing system with instructions on how and when to correct the document. The Clerk may also strike documents on the Court's weekly orders.

The deputy clerks input information about the filing into the Court's case management system. For a petition, this includes virtually all of the basic information about the case that is required by Rule 53 (or Rule 52 for original proceedings). For example, the name of the trial court judge, the court of appeals panel, and the identity of parties and counsel. This data is used for recusal purposes, to populate the online docket sheets, to send notices, and to create statistical reports published by OCA. It is therefore critical that you provide accurate information. This information about the case will usually appear on the Court's website the day after the filing was received. Case information is updated as other documents are filed or phone calls are made or received concerning the case.

B. Formatting

1. Margins

The petition must have at least one-inch margins (top, bottom, and sides). TEX. R. APP. P. 9.4(c).

2. Spacing

The text of the petition must be double-spaced. Block quotations, issues or points of error may be single-spaced. TEX. R. APP. P. 9.4(d).

3. Font

Documents created using a computer (as opposed to a typewriter) must use a font size no smaller than 14-point, except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point. TEX. R. APP. P. 9.4(e).

> **TIP:** Use a 14-point proportionally spaced typeface or larger. Many brief writers mistakenly use 12-point font because Word defaults to this font size. Times New Roman is probably the most common typeface used. The United States Supreme Court and the Fifth Circuit use New Century Schoolbook, and that is an acceptable font. Georgia is a font that was designed for reading on a screen, so it may be a good choice for electronic briefs. The website typegraphyforlawyers.com provides lots of tips about fonts. Whatever font you choose, do not use a font smaller than 14-point for computer generated documents.

4. Front Cover

The front cover of petitions and briefs should include the case number at the top of the page if already assigned. For an initial motion for extension of time to file a petition for review or petition for review that has not already been assigned a case number, leave the case number blank. The cover should also include the case style, the title of the document, and the name, mailing address, telephone number, fax number, if any, and the State Bar of Texas identification number of the lead counsel for the filing party. TEX. R. APP. P. 9.4(g).

Although not required by the rules, the front cover of the petition should also list the name of the court of appeals and the court of appeals' case number (e.g. "On Petition for Review from the Third Court of Appeals at Austin, Texas, 03-08-0001-CV"). Both the Court and the Clerk's Office prefer that court of appeals name and case number appear on the front cover. For examples, visit the Court's electronic brief page on the website.

Rule 53 provides that "[t]he Supreme Court may review a court of appeals' final judgment on a petition for review addressed to 'The Supreme Court of Texas.'" If you are attempting to use a brief you filed in the court of appeals as your petition, you should at a minimum be sure to change your cover and any salutation to address the Supreme Court. Do not forget that the word and page limits are shorter for a petition filed with the Supreme Court.

5. Binding for Paper Filings

The Clerk's Office scans paper filings in order to create PDFs that are attached to the Court's case management system. Only one unbound paper copy is required for paper filings. In other words, you do not need to bind paper filings.

C. Citations

Follow the most recent edition of A Uniform System of Citation (Bluebook) and Texas Rules of Form (Green Book). Many staff attorneys and law clerks are former law review and journal editors and their views of the quality of your petition or brief may be affected by the accuracy of your citations. Be particularly careful to provide accurate subsequent history for Texas court of appeals' cases.

For citations to the record, the accepted practice is to use the abbreviations CR for Clerk's Record and RR for Reporter's Record (e.g. 1 CR 123 or 2 RR 453). Staff prefers that citations to the record be to the PDF page number.

D. Lead Counsel

In the Supreme Court, lead counsel for the petitioner is the attorney who signs the first document filed with the Court. Lead counsel for the respondent will be the attorney designated by the petitioner in the petition for review, unless the first document filed by the respondent indicates otherwise. The Clerk's Office enters a notation in the case management system indicating which attorney is lead counsel. Lead counsel must sign up for Casemail electronic notifications, which are in addition to the electronic notifications sent by the case management system.

It is not necessary to file a notice of new lead counsel when the lead counsel is not the same lead counsel that represented the party at the court of appeals. But if the lead counsel changes while the matter is pending at the Supreme Court, a new lead counsel should be designated. *See* Tex. R. App. P. 6.1.

E. Word and Page Limits

Computer generated documents are subject to word limitations. For documents created with typewriters or written by hand, page limits apply. The following is a list of word and page limits for the various documents that may be filed in the petition for review process:

Document Type	Words	Pages
Petition for Review	4,500	15
Response to Petition	4,500	15
Reply to Response	2,400	8
Brief on the Merits	15,000	50
Reply Brief on the Merits	7,500	25

TEX. R. APP. P. 9.4, 53.6, 55.6. See the list below of the sections which count against these word and page limits.

F. The Sections of a Petition for Review

The Clerk's Office checks to make sure that all documents contain the required sections. Be sure to make sure you have included all of the required sections. The required sections for a petition for review are:

- Identity of Parties and Counsel
- Table of Contents
- Index of Authorities
- Statement of the Case
- Statement of Jurisdiction
- Issues Presented
- **Statement of Facts**
- **Summary of the Argument**
- **Argument**
- **Prayer**
- Signature
- Certificate of Compliance
- Appendix

TEX. R. APP. P. 52.3, 53.2. Only the sections in bold count against the word and page limits for petitions. TEX. R. APP. P. 53.6.

> **TIP:** When numbering the pages of your petition, use small roman numerals (i, ii, iii, iv) for the initial sections that do not count against your word or page limit (e.g. Identity of Parties and Counsel, Table of Contents, Index of Authorities, etc.). Begin regular page numbering with the sections that count against your page limit. This method will not only help the reader identify the substantive sections of your brief, but it will help you avoid exceeding the word and page limits—one of the most common reasons for striking petitions.

1. Identity of Parties and Counsel

The petition for review must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel. TEX. R. APP. P. 53.2(a).

2. Table of Contents

The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

Use your word processor's built-in table of contents tool to generate a professional looking table of contents. The table of contents should reference the beginning page of every major section of the brief and every issue heading and sub-heading. Any section required by the rules is a major section (e.g. Identity of Parties and Counsel, Table of Contents, Statement of the Case, Statement of Jurisdiction, etc.). Every issue heading and sub-heading in your Argument section creates an outline of your argument, so list these headings and sub-headings in your table of contents.

3. Index of Authorities

The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

4. Statement of the Case

The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

- a concise description of the nature of the case;
- the name of the judge who signed the order or judgment appealed from;
- the designation of the trial court and the county in which it is located;
- the disposition of the case by the trial court;
- the parties in the court of appeals;
- the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
- the citation for the court of appeals' opinion;
- the disposition of the case by the court of appeals.

TEX. R. APP. P. 53.2(d).

Although the rule does not specify a particular form, the statement of the case should not be a narrative in sentence and paragraph form. Instead, the Court and the Clerk's Office prefer that this information be listed in a table format. The statement of the case is not intended as an opportunity to argue your case, rather it is intended to be an easy reference to basic information about the case. The Justices use this information for recusal purposes, the staff uses the information to prepare study memos, and the Clerk's Office enters this information into the case management system. Putting this information in a narrative form makes it difficult for everyone to find the information they need about your case. Avoid any temptation you may have to use the statement of the case to persuade or argue the merits. Examples of the table format can be found on the Court's electronic briefs page on the website.

5. Statement of Jurisdiction

The petition must state, without argument, the basis for the Court's jurisdiction. TEX. R. APP. P. 53.2(e). The most often cited statutory bases for jurisdiction in the Supreme Court of Texas are found in Texas Government Code § 22.001. These grounds for jurisdiction are parroted by the factors listed in Rule 56.1 that the Court is to consider in deciding whether to grant the petition. These factors are:

- whether the Justices of the court of appeals disagree on an important point of law;
- whether there is a conflict between the courts of appeals on an important point of law;
- whether a case involves the construction or validity of a statute;
- whether the court of appeals appears to have committed an error of law of such importance to the state's jurisprudence that it should be corrected; and
- whether the court of appeals has decided an important question of state law that should be, but has not been, decided by the Supreme Court.

6. Issues Presented

The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals. TEX. R. APP. P. 53.2(f).

7. Statement of Facts

The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references. TEX. R. APP. P. 53.2(g). The statement of facts is included in the fifteen page limit for petitions and responses. TEX. R. APP. P. 53.6.

8. Summary of the Argument

The petition must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary is not merely a repeat of the issues or points presented for review. TEX. R. APP. P. 53.2(h). The summary of the argument is included in the fifteen page limit for petitions and responses. Tex. R. App. P. 53.6.

9. Argument

The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated. TEX. R. APP. P. 53.2(h). The argument is included in the fifteen page limit for petitions and responses. TEX. R. APP. P. 53.6.

10. Prayer

The petition must contain a short conclusion that clearly states the nature of the relief sought. The prayer is included in the fifteen page limit for petitions and responses. TEX. R. APP. P. 53.6.

11. Appendix

The required contents for the appendix are:

- the judgment or other appealable order of the trial court from which relief in the court of appeals is sought;
- the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;
- the opinion and judgment of the court of appeals; and
- the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument. TEX. R. APP. P. 53.2(k)(1).

> **TIP:** Do not forget to include a copy of the court of appeals' judgment in the appendix. This requirement is frequently overlooked.
>
> **TIP:** For your electronic filing, do not scan the court of appeals' opinion. Use the electronic version available on the court of appeals website or download a PDF version from Westlaw. Remember you should only scan when necessary.

The appendix may also contain other item pertinent to the issues or points presented for review, excerpts of relevant court opinions, statutes, constitutional provisions, or documents on which the suit is based. But do not include unnecessary items or attempt to use the appendix to avoid the page limitations. TEX. R. APP. P. 53.2(k)(2).

> **TIP:** Before filing your petition, check all of the copies of your petition to make sure that the appendix materials are not missing any pages. One Justice often asks the Clerk's Office to contact filers to tell them that they inadvertently included every other page of an item in the appendix. This is obviously vexing to someone that is trying to understand your case, so take a few minutes to make sure your appendix materials are complete and accurate.

The appendix *must* be combined into one computer file with the document it accompanies. TEX. R. APP. P. 9.4(j)(4). And you *must* bookmark each item in your appendix, using a description that of the appendix item that is helpful (e.g. Appendix A-Court of Appeals' Opinion). TEX. R. APP. P. 9.4(h).

With electronic briefs, the size of the appendix should usually not be an issue, so long as you are not using a lot of scanned files. The Justices routinely state that they appreciate electronic briefs that provide hyperlinks to cases, transcripts and other useful materials contained in the appendix. The Court's case management system automatically hyperlinks citations to cases, statutes, and rules to Westlaw—but the system does not overwrite hyperlinks that you provide to appendix items.

If you are not an attorney and you are filing on paper, do not make the entire package unnecessarily large by including unnecessary appendix items. Limit your appendix to items that are essential to understanding your petition.

G. Response to Petition for Review

The respondent in a petition for review proceeding has the option to (1) file a response; (2) file a waiver of response; or (3) do nothing. Any response must be filed with the Supreme Court Clerk within 30 days after the petition is filed. TEX. R. APP.P. 53.7(d). A petition for review will not be granted without a response being filed or requested by the Court. TEX. R. APP. P. 53.3.

A waiver of response is a short letter stating that the respondent elects not to file a response to the petition for review unless one is requested by the Court. TEX. R. APP. P. 53.3. The waiver of response is *not* a waiver of the respondent's right to file a response if one is requested by the Court. *Id*. If a

waiver of response is filed, the petition for review will be forwarded by the Clerk the first Tuesday after the waiver is filed.

If no response or waiver of response is filed, the petition will be forwarded to the Court the first Tuesday after thirty days from the date the petition for review was filed.

Unless the respondent is dissatisfied with the following sections of the petition for review, the response need not contain these sections:

- Identity of Parties and Counsel
- Statement of the Case;
- Issues Presented (unless an independent ground for judgment or claim to a lesser judgment is asserted);
- Statement of Jurisdiction
- Statement of Facts

TEX. R. APP. P. 53.3(a)-(d).

The arguments asserted in the response must be confined to the issues or points presented in the petition for review or asserted by the respondent in the respondent's statement of issues.

The appendix to the response need not contain any item already contained in the petitioner's appendix. TEX. R. APP. P. 53.3(f).

H. Reply

The petitioner may file a reply addressing any matter in the response. TEX. R. APP. P. 53.5. However, the Court may consider and decide the case before a reply is filed. *Id*. Any reply must be filed with the Clerk within 15 days after the response is filed. TEX. R. APP. P. 53.7(e).

V. JUDICIAL DETERMINATION AT PETITION STAGE: AN OVERVIEW OF ACTION ON PETITIONS FOR REVIEW AND ORIGINAL PROCEEDINGS

A. "Conveyor Belt" System

The Court employs a "conveyor-belt" system in acting on petitions for review and non-emergency mandamus petitions. Once a petition is placed in the hands of the Justices on a given Tuesday, it begins moving along the conveyor belt. Unless it is affirmatively removed from the belt by one or more of the Justices, the petition is automatically denied on the Court's Friday orders, 31 days after the Justices first received it. One or more of the Justices can remove a petition from the conveyor belt by voting to take some action other than denying it. The Court votes electronically using a software system developed for the Court and the other Texas appellate courts, which is called the Texas Appeals Management and E-Filing System ("TAMES").

1. Exception for urgent matters

Some major exceptions to the use of the conveyor belt system are petitions for writ of mandamus in which a motion for emergency or temporary relief has been filed, petitions for writ of habeas corpus, and parental termination cases. These matters are initially handled by the Mandamus Attorney. The Mandamus Attorney may present these matters by memo to the Court that is circulated by e-mail, as a preliminary matter at a regularly scheduled conference, or by "ringing the bell" to call the Court to the conference room to discuss particularly urgent matters.

B. Initial Votes: Pink Vote Sheets and Purple Vote Sheets

The Court uses three different vote sheets, which serve three different functions. Originally printed on colored paper to distinguish them, these votes sheets are now available electronically—although some Justices still print them. Before electronic filing, a pink vote sheet was placed in each petition and rehearing file folder and was the vote sheet for that particular case. Pink vote sheets may still be printed and are used by the Justices to make notes about petitions. Pink vote sheets list the Supreme Court style and case number, identify the trial court and court of appeals, and indicate whether a response or response waiver was received by the Clerk. They provide blanks for the reviewing Justice to indicate the action deemed appropriate: deny; request response; request record; discuss at conference; request study memo; issue *per curiam* opinion; grant; dismiss for want of jurisdiction; refuse petition; hold; dismiss petition on motion of party. The pink vote sheets also provide space for "remarks" by the reviewing Justice— essentially space for notes that the Justice can use to refresh recollections about the case when the petition proceeds to conference. If briefs on the merits are requested in a particular case, the assigned law clerk may review the pink vote sheets of the Justices to assist the law clerk in preparing the study memo. For an example of a pink vote sheet, see Appendix C. Each Tuesday, each chambers can also print a purple vote sheet on all matters forwarded to chambers that week. This list is of course also available electronically. The purple vote sheet lists not only petitions for review, mandamus, and habeas corpus, but also rehearing motions, and other matters requiring action by the full Court. The purple vote sheet includes the same blanks as the pink vote sheet for the Justices to record their preferred disposition. Justices may cast their votes electronically or give the

printed purple vote sheet to an assistant to enter into the computer system. The deadline for votes to be entered on the matters listed on the purple vote sheet is noon Tuesday, four weeks after the petition is first forwarded to the Justices. If any Justice votes to take any action other than denying a petition, the petition is removed from the conveyor belt. A Justice's failure to mark a vote on a petition is treated as a vote to deny it. For an example of a Purple Vote Sheet, see Appendix D.

C. Conference Votes: Yellow Vote Sheet

The agenda for the Court's conference is composed of "preliminary items" requiring the immediate attention of the court, post-submission discussion of prior oral arguments, draft opinions in causes, draft *per curiam* opinions, motions for rehearings of causes and denials of petitions, and pending petitions. The yellow vote sheet assists the Court's disposition of the last two categories of agenda items—rehearings of denials of petitions (but not rehearings of causes) and pending petitions. It is used to allow the Justices, in advance of conference, to see how the other Justices voted on matters previously listed on purple vote sheets, and to record votes on circulated study memos due to be discussed at conference. The votes of the Justices may change after circulation of study memos.

At the time the conference agenda is prepared, generally one week in advance of the scheduled conference, the Court's Administrative Assistant prepares a preliminary yellow vote sheet. That vote sheet will not include any petitions or rehearing of denial of petition motions that have failed to make the "initial cut" due to lack of a vote for anything other than "deny" on the purple vote sheets marked by the Justices. As for those petitions and rehearing motions that do make the "initial cut," how the Justices voted on matters listed on purple vote sheets determines which conference the matter goes to. If any of the Justices requests a response to a petition or rehearing motion, the matter is scheduled for the conference following the expiration of 30 days after the response is filed. In those rare occasions when a Justice requests the record without full briefing on the merits having been called for, the matter is scheduled for conference following the expiration of 30 days after the record is received. If the Justices mark their purple vote sheets for something other than "response requested," "record requested," or "deny," the matter goes directly to the next scheduled conference. Thus, the yellow vote sheet could include matters from several different purple vote sheets.

Those petitions and rehearing of denial of petition motions that make the "initial cut" and are "ripe" for discussion at the next scheduled conference are listed on the yellow vote sheet for that conference, along with any study memos that will be discussed at that conference. Through TAMES (the court's case and agenda management system) the Court's Administrative Assistant, records on the yellow vote sheet how each Justice voted on each petition and rehearing motion previously listed on a purple vote sheet. With respect to the study memos that are to be discussed, the Administrative Assistant lists the initial votes that were cast before the study memo was prepared. The yellow vote sheet is then circulated to all of the Justices. The Justices, once they have had a chance to see how other Justices have voted, and review any study memos that have been circulated, are then at liberty to change their vote on a petition or rehearing of denial of petition motion. The Justices record their votes on all petitions, rehearings of petitions, and study memos scheduled for discussion, and on the morning of the conference, each Justice enters their vote in TAMES. All new votes and vote changes are copied to a new cumulative yellow vote sheet, which is then circulated to all the Justices. With the votes thus compiled, the Court can move more efficiently through the discussion of these matters. The Chief Justice is able to quickly identify which matters are candidates for an outright grant, which are clear candidates for a study memo, and which Justices have an interest in a particular matter that may require more protracted discussion. Achieving a consensus by the Justices that a petition be denied is the quickest and easiest disposition for the Court.

D. Request for Response

If any of the Justices requests that a response be filed, that is sufficient to pull the case from the "conveyor belt." The case is placed on a "status report" list until the response is received or the deadline for filing the response has passed. At that point the case is placed on the Court's conference agenda, after allowing ample time for a reply to be filed (assuming a response was filed) as well as time for the Justices to review the response and any reply.

E. Review of Petitions

1. Amount of Review

The practices of the Justices vary with respect to their initially reviewing petitions for review, mandamus and habeas corpus in order to mark the purple vote sheets. Not all the Justices will read all the petitions each time. Some use their court staff to summarize petitions and flag those deemed worthy of further study, and some read all the petitions each time. Although it may vary somewhat, most Justices say they spend a maximum of 15 minutes per petition

package, which includes reviewing the petition, court of appeals opinion, and response (if any).

2. Manner of Review

The order in which the matters in the petition package are reviewed by the Justices also varies. Some start with the court of appeals' opinion, since the Court is reviewing the opinion for error. Some start with the issue statements and then look at the court of appeals' opinion. Some start with the summary of the argument and then read only those portions of the court of appeals opinion relevant to the issues presented.

3. Timing of Review

The practice varies with respect to the timing of review as well. Some Justices read the petitions soon after they are forwarded; others read them the week before the purple vote sheet is due. One or two may not read them in time to mark their votes on the purple vote sheet, but may read them later and pull from orders a petition set to be denied so it can be discussed at the next conference. Those Justices who read petitions earlier may alert the other Justices to an upcoming petition that involves an issue similar to one being discussed, and the Court may then decide to hold the petition to consider them together.

4. Role of Court Staff in Review

Some Justices have or have had staff attorneys or law clerks help screen petitions and recommend votes. This practice has ranged from having staff generally screen petitions for particular issues (*e.g.*, family law issues, constitutional law issues), to having them summarize all petitions and recommend their disposition.

F. Conference at Petition Stage

1. Conference Calendar

The Court sets its calendar for the upcoming term during the summer. Thus, the conference schedule for the term is usually available on the Court's website by August of each year. Generally, the Court holds conference once a month on Tuesdays at 9:00 a.m. If the Court is unable to complete its business in a single day, the conference carries over to Wednesday, starting at 9:00 a.m. Holidays, judicial conferences outside of Austin, and swearing-in ceremonies will determine whether a scheduled conference is cancelled, rescheduled, or starts late. At the end of the Court's session, as summer approaches, the Court generally schedules several conferences each month, as the Court works on wrapping up opinions. In June, the Court usually conferences weekly.

2. Length of Conference

Typically, conference will start at 9:00 a.m. and end between 4:00 and 6:00 p.m. At the beginning of the term, in mid-August, the first conference will usually last two days and the second will last one and one-half days.

3. Attendance at Conference

The persons required to attend conference for its duration are the Justices, the Court's Administrative Assistant, and the Conference Monitor for that week (a duty assigned to a law clerk in a particular chambers on a rotating basis by seniority). Staff attorneys usually attend conference for its duration, although this depends on the particular Justice. Law clerks are allowed to attend conference for its duration, again depending on the particular Justice. Interns may participate at conference only to the extent of discussing opinions, rehearing of petitions, and petitions on which they have actually worked. The Mandamus Attorney may be present to present preliminary matters to the Court that must be decided quickly, such as motions for emergency or temporary relief. And the Clerk is occasionally asked to attend to discuss particular matters on the agenda. The Clerk, the General Counsel, the Rules Attorney, the Staff Attorney for Public Information, and the Administrative Assistant all attend the Administrative Conference that follows after the regular conference is concluded.

4. Agenda for Conference

The conference agenda is prepared by the Court's Administrative Assistant with input from each chambers. Items included on the agenda include filings that require immediate attention by the Court ("preliminary items"), post-submission discussion of prior oral arguments, draft opinions in causes, draft *per curiam* opinions, motions for rehearing of causes and petitions, and pending petitions.

5. Disposition of Petition Without Discussion at Conference

If no Justice has either requested a response to a petition or indicated a preferred disposition of the petition other than "deny," the petition will not be placed for discussion on the Court's conference agenda. Instead, the petition will be automatically denied on the Court's Friday orders, 31 days after the petition package was forwarded to the Justices.

6. Postponement of Discussion of Petition

Sometimes the only Justice who has voted to discuss a petition (or something other than "deny") is not present at conference. On other occasions, a Justice will ask for additional time to study the

petition. In these instances, the petition will be placed for discussion on the next conference agenda, or the petition may be denied if the Justice reviews it and declines to vote for any action other than deny. On still other occasions, there may be some votes for a certain action (*e.g.*, assigning a study memo), but the votes are insufficient. In this instance, the Court may hold the petition over for Justices to further study it or for an absent Justice to vote. Or the Court may vote to deny the petition on orders subject to the absent Justice's prerogative to "pull" the petition from orders before they issue. The Court's Administrative Assistant is responsible for monitoring petitions and ensuring that they are placed back on the conference agenda at the appropriate time.

7. Discussion of Petitions at Conference

Because of the extensive list of matters typically included on the conference agenda, even when a petition survives automatic denial and makes it to conference, the amount of time devoted to discussion of the petition is generally limited—usually 1 to 15 minutes, with 15 minutes being considered an extraordinarily lengthy discussion. All petitions on the conference agenda are called to the table by the Chief Justice in numeric order, oldest cases first. A petition is discussed at conference according to the votes reflected on the yellow vote sheet. Generally, the Chief Justice controls the discussion by calling on Justices who have either voted to discuss the petition or recommended specific disposition, such as request study memo, grant, dismiss WOJ, or hold. These Justices then present their concerns to the Court. Other Justices may jump into the discussion, including those who have voted to deny the petition (with their reasons for denial). Justices who have not yet voted may vote at this point. Justices may also change their votes based on the conference discussion. If no consensus is apparent from the discussion, the Chief Justice will call for a vote. At this point, the most common resolutions are to deny the petition, request a study memo, or dismiss the petition for want of jurisdiction.

G. Votes Required for Particular Dispositions

The timing and disposition of each petition turns on the Justices' votes. The initial votes on petitions are due by noon on Tuesday four weeks after the Clerk's Office forwards the petitions to the Court. The Justices may, however, change their votes, or place their votes for the first time on a petition, if the case survives automatic denial and is placed on the conference agenda. Because conferences are held on Tuesdays and the Court's orders issue on Fridays, this allows time for one or more of the Justices to "pull" the matter from orders for further study or for some other reason. The various dispositions and required votes are set forth below.

1. Deny

If all of the votes on the purple vote sheets are to deny the matter, even if fewer than 9 votes are cast, the petition is automatically denied without any discussion at conference on the following Friday's set of weekly orders, 31 days after the petition package was initially forwarded to the Justices.

2. Request Response

If any Justice votes to request a response to the petition, the Clerk's Office requests by letter that the response be filed within 30 days. If the response is timely filed, the petition is placed on the calendar for the first conference following the expiration of an additional 30 days. If the response is not timely received and no motion for extension of time is filed and granted, the petition is ultimately placed on a conference agenda with a notation that the response was never received. The Court may then dispose of the petition or instruct the Clerk's Office to either request a status report on the response or make other inquiry.

3. Request Record

If any Justice votes to request the record, the court of appeals will be directed to send the appellate record to the Clerk of the Supreme Court. It is relatively rare for a Justice to request the record absent a request for full briefing on the merits.

4. Discuss

If any Justice votes to discuss a petition, the petition will be discussed at the next conference. If no other interest is shown in the petition, it is denied on the following Friday's orders.

5. Dismiss WOJ

Similarly, if any Justice votes to dismiss a petition for want of jurisdiction, the petition is discussed in the earliest scheduled Tuesday conference. If 5 or more Justices vote to DWOJ the petition, it is dismissed WOJ on the following Friday's orders. If not DWOJ'ed, the petition is denied or otherwise disposed of according to the votes in conference.

6. Request Full Briefing and Memo

If 3 or more Justices vote to do so, the Clerk's Office will request full briefing on the merits and a study memo will be assigned. The request letter will indicate when petitioner's and respondent's briefs on the merits are due, and when petitioner's reply brief on the merits is due. The request for full briefing is

invariably accompanied by a request that the court of appeals send the appellate record to the Clerk of the Supreme Court. The Clerk usually mails the briefing requests the Friday following conference.

7. Grant Petition for Review

If 4 or more Justices vote to do so, a petition for review is granted. The rules preclude the Court from granting a petition without first requesting a response. TEX. R. APP. P. 52.4, 53.3. Nothing in the rules, however, precludes the Court from granting the petition before requesting a study memo or full briefing on the merits. As a practical matter, however, the Court tries to avoid this and it rarely occurs.

8. Grant Petition for Writ of Mandamus or Habeas Corpus

It takes a vote of 5 or more Justices to grant a petition for writ of mandamus or habeas corpus.

9. Hold

If 6 or more Justices vote to do so, the Court may hold off on taking action on a petition. This may be so that the petition can be disposed of with a pending cause, or so that further study can be done.

10. *Per Curiam*

If 6 or more Justices vote to do so, the Court may, without hearing oral argument, grant the petition and issue a *per curiam* opinion in the matter. TEX. R. APP. P. 59.1. In that event, the Chief Justice will assign a Justice to draft a *per curiam* opinion, usually the same Justice whose chambers prepared the study memo. Following further deliberations, either the opinion will issue on 5 or more votes, or the matter will be otherwise disposed of. In other words, at least 6 Justices must vote to issue a PC without oral argument, but only 5 Justices need join in the PC.

11. Refuse

If 6 or more Justices agree, the court of appeals' opinion may be refused. In practice, the Court will generally only consider refusal after a study memo has been prepared, the memo endorses the court of appeals' opinion, and the Court has jurisdiction over all issues. It is the Court's policy that a petition will only be refused after the court of appeals' opinion has been reviewed by a Staff Attorney.

12. Improvident Grant

The Court may decide after initially granting review, but before issuing a decision, that review never should have been granted in the first place. In that event, the Court issues an "Improvident Grant" notice to the parties. It takes the votes of 6 or more Justices to IG a case.

13. Summary of Required Votes

In sum, the following votes are required for the corresponding action or disposition of a petition for review, mandamus or habeas corpus:

Request Response	1
Request Record	1
Discuss	1
Dismiss WOJ	5
Request Briefs/Memo	3
Grant Petition for Review	4
Grant Mandamus/Habeas	5
Hold	6
Per Curiam	6
Refuse	6
Improvident Grant	6
Deny	Automatic unless at least 1 vote for something besides "deny"

VI. BRIEFS ON THE MERITS AND STUDY MEMO

A. Request for Briefs on the Merits

1. Practical Significance of Request

The Court requests the parties to file full briefing on the merits in only about 1 in 4 cases. The request for full briefing increases the odds of a grant or *per curiam* opinion from about 1 in 10 to 1 in 3.

2. Relationship to Assignment of Study Memo and Request for Record

When briefing on the merits is requested, the Clerk's Office simultaneously requests the clerk of the court of appeals to forward the record to the Supreme Court. Full briefing is almost always requested when a study memo is assigned. Occasionally, a study memo will be assigned without full briefing (*e.g.*, on jurisdiction only), and then the time frame for the study memo is shorter (*i.e.*, it is due to the Court sooner than if the Court had to wait for full briefing on the merits). Sometimes petitions are held while the opinion in a cause or a *per curiam* opinion is being drafted, so that the Court can be ready to dispose of the petition when the cause or *per curiam* is close to completion. In such a case, the Court may request full briefing without an official study memo ever being prepared; the chambers with the *per curiam* or cause studies the petition, the record, and the briefing, and makes a recommendation to the Court on how to dispose of the petition in light of the *per curiam* or cause opinion.

3. Deadlines

The ordinary rules for filing briefs on the merits are set out in the appellate rules. The petitioner's opening brief is due 30 days after the notice requesting full briefing, the respondent's brief is due 20 days after the petitioner's brief, and petitioner's reply brief is due 15 days after that. TEX. R. APP. P. 55.7. On motion complying with Rule 10.5(b), the Court may extend the time for filing these briefs. *Id.* In rare cases, the Court may decide to expedite full briefing. More often, the deadlines are extended through motions for extension of time. Such motions are generally handled by the Clerk; the chambers which has been assigned the study memo is then informed of the extension. If the Clerk is absent, the extension motions are forwarded for action to the chambers assigned the study memo.

B. Assignment and Preparation of Study Memo

1. Manner in Which Assignments are Made

In most cases where it requests full briefing on the merits, the Court also assigns the case to the chambers of one of the Justices for preparation of a study memo. As the Court makes its assignments, each successive one is assigned in turn to a Justice in a rotation order that begins with the Chief Justice, proceeds down by seniority, and then starts again with the Chief Justice. Whichever chambers was next in line for assignment on the rotation at the end of a given conference is first in line at the next conference. The Justice's vote on the petition does not affect the assignment (*i.e.*, even if a Justice votes to deny a petition, the memo may nonetheless be assigned to that Justice's chambers). If, however, the Justice is recused on the petition, the memo will not be assigned to that Justice's chambers. In mandamus or habeas corpus proceedings, the Court may assign the case to the Mandamus Attorney for preparation of the study memo, rather than to the chambers of one of the Justices.

After conference, the Court's Administrative Assistant circulates a list of all the study memo assignments and due dates. Each chambers then assigns study memos according to their internal system (which may involve alternating memos between law clerks, except where law clerk recusal issues arise, or it may depend on law clerk workloads).

2. Focus on Particular Issues

Sometimes at conference, the Court will instruct the law clerk to focus on particular issues raised by the petition, or specific issues raised by the Court (such as jurisdiction). The law clerks are also instructed generally to focus on dispositive issues—if the law clerk can resolve the petition based on one issue, the law clerk has the discretion not to address the others unless the Court disagrees with the resolution and sends it back for the law clerk to address the other issues. It is the responsibility of the law clerk to identify those issues that are not addressed in the study memo.

3. Reliance on Parties' Briefs vs. Independent Research

Law clerks are generally instructed to use the briefs only as a starting point. Law clerks are instructed to double check the information (facts and legal authority) presented in the briefs, and then to do independent research for authority, preservation of error, and other dispositive issues that the parties may have missed. The law clerks are specifically charged to address error preservation in their study memo.

4. Study Memo Guidelines

Law clerks are provided with the Court's study memo policy. They are also given a study memo orientation, usually by one of the more senior Staff Attorneys. The orientation includes review of the study memo policy, preservation of error principles, and when to recommend a grant as opposed to other action. The law clerks may not exceed the Court's 10-page (single-space) limit for the study memo without the Chief Justice's permission. Further guidelines may be provided within each chambers. Although the Justices are generally not involved in the preparation of the memos, the Staff Attorneys generally read, edit, and discuss the memos with the law clerks, at least at the beginning of the term. In preparing the study memo, the law clerk is charged to summarize each side's arguments and authorities and to provide an objective analysis of each issue. The law clerk is not required to state or frame the issues the same way the parties have, or even in the same order.

5. Law Clerk's Recommended Disposition

Law clerks are asked to make a recommendation of disposition to the Court—grant, PC, deny, refuse, dismiss WOJ, or hold. The law clerk leaves that question "open" if the law clerk is unable to decide on a specific recommended disposition. If the law clerk concludes that the Court should grant a petition, the clerk may simply recommend a "grant" or the law clerk may recommend a "grant" along with a proposed resolution of the issue. Also if the law clerk recommends "refuse," the Court's policy is to have the matter assigned to a Staff Attorney for review to determine if refusal is in fact appropriate.

6. Deadline for Memo

The study memo is due for circulation to the Justices 30 days after the response brief on the merits

is filed. This allows sufficient time for the law clerk to receive and consider the petitioner's reply brief, which is due 15 days after the response brief. TEX. R. APP. P. 55.7. When the Court grants an extension motion for filing the reply brief, a corresponding change is made to deadline for completing the study memo—the memo will not be circulated until after the extended reply date.

When the motion to extend time to file the reply brief on the merits is unopposed or no response will be filed, the Clerk will inform the chambers assigned the study memo that the motion will be granted unless otherwise instructed by the chambers. If the chambers objects to extending the deadline to file the reply brief on the merits, the Clerk will send a letter indicating that the deadline for filing the reply is not jurisdictional, that the reply can be filed at any time, and that it will be filed and considered by the Court if received before the case has been disposed. If the reply is filed after the due date for the memorandum, the law clerk will supplement the memo if a new argument is raised. Counsel are advised to seek short extensions of time to file reply briefs on the merits as these shorter extensions are more likely to be granted. If needed, a short extension of fifteen days is more likely to be granted than a request for an additional thirty days. And a request for more than thirty days may result in the Clerk sending the standard letter stating that a reply brief is not jurisdictional, that the reply can be filed at any time, and that it will be considered by the Court if received before the case has been disposed of.

C. Amicus Submissions at Briefs on the Merits Stage

1. Forwarding to Justices

Once a case reaches the briefs on the merits stage, any amicus briefs that are submitted are forwarded immediately to the Justices.

2. Review by Justices

While the practice varies, most Justices will not review an amicus brief at the time it is submitted, unless the Justice is closely monitoring that particular case. Instead, the Justices typically will review the amicus brief for the first time—shortly before the conference at which the study memo for that case is scheduled to be discussed. Some Justices do not actually review the amicus briefs, but rely instead on the study memo's discussion of any amicus briefs.

3. Treatment in Study Memo

The law clerks are instructed to list on the first page of the study memo the names of any amici. The study memo will note which side—petitioner or respondent—the amicus supports. If the arguments in the amicus brief are essentially the same as those in the supported party's brief on the merits, the study memo will merely note that. If, however, the amicus brief includes independent analysis that is different from that appearing in the supported party's brief, the study memo will generally contain a more detailed discussion of that independent analysis.

Amici briefs can be very helpful to the Justices by identifying the practical impact of the case—*e.g.*, describing in concrete terms how a particular outcome will adversely affect the amicus and others similarly situated. In order to have an impact on the substantive discussion appearing in the study memo, counsel for an amicus should submit the brief no later than the date the respondent's brief is filed or very shortly thereafter. As a general matter, it is better to line up amicus support at the petition stage rather than wait until the merits stage.

4. Call for the Views of the Solicitor General ("CVSG")

When the Court wants the Solicitor General's Office to submit a brief, the Court's orders will contain a notation stating that the Solicitor General is invited to file a brief in the case. These requests are modeled after the United State Supreme Court's practice of inviting the U.S. Solicitor General to express views about a matter pending before that Court. These requests appear on the Court's orders as follows:

SOLICITOR GENERAL INVITED TO FILE BRIEF:

08-0465 THE STATE OF TEXAS v. $281,420.00 IN UNITED STATES CURRENCY; from Hidalgo County; 13th district (13-06-00158-CV, ___ SW3d ___, 04-03-08)

The Solicitor General is invited to file a brief in this case expressing the views of the State.

D. Circulation of Study Memo

1. General Policy Regarding Circulation

The law clerk circulates one copy of the study memo to each of the Justices as well as one to the Court's Administrative Assistant. The conference agendas are prepared on Monday, one week in advance of the next conference. The agenda includes any study memos that have been filed or are due since the last conference. This allows the Justices at least a week to review the memo before the conference in which the memo is to be discussed, depending on

which day of the week the memo is actually circulated.

2. No Screening by Justices Before Circulation

Although each study memo is assigned to a particular chambers for preparation, most Justices do not screen the memo before it is circulated—one Justice does so fairly consistently and another couple of Justices do so occasionally.

3. Justices' Review of Study Memo vs. Parties' Briefs

In making their decision to grant or deny review at this juncture, the practices of the Justices vary. Some may only read the study memo, while some may read the study memo and briefing. Most Justices typically review the study memos in a batch before conference.

E. Conference at Briefs on the Merits Stage

1. Nature of Discussion

The law clerk who prepared the study memo is present in the room during conference, but does not actually make a formal presentation of the study memo. Instead, the law clerk is available as a resource in case any of the Justices have questions. The Chief Justice generally calls on those Justices who have indicated some vote on the yellow vote sheet other than "deny" to allow them the opportunity to present their views or question the law clerk who prepared the study memo. If 4 or more Justices have already indicated an interest in granting the case, the discussion will typically be very short if there is any discussion at all. If the decision to grant or deny is a close one, however, the discussion may be more protracted—up to 30 minutes in an unusual case.

2. Supplemental Study Memo

Occasionally, the Court will table the discussion of a study memo and request the preparation of a supplemental study memo. This task is almost always assigned to the same chambers that prepared the original study memo. The supplemental memo may be assigned to a different chambers if, for example, the issue targeted for supplementation is one that is being addressed in another chambers as part of its preparation of a majority opinion in a cause. Consequently, in preparing merits briefing, counsel is advised to let the Court know if similar issues are involved in other matters pending before the Court.

Factors that may trigger a supplemental memo include a request by the Court for clarification of a particular point in the record. Additionally, the Court may disagree with a law clerk's assessment that a particular issue is dispositive and renders unnecessary the discussion of other issues; the Court may request a supplemental study memo to discuss the unaddressed issues.

3. Protracted Inactivity

In some cases, many months may go by after the parties have submitted all their briefing on the merits. This does not mean that the Court has "forgotten" about the case; there is usually an explanation that the parties will not be informed of and the Clerk's office is not privileged to convey if asked. The explanation may be that the Court has voted to prepare a *per curiam* opinion and a protracted period of time is required for that opinion to ultimately issue. Or it could be that the Court has decided to "hold" the case until either a *per curiam* opinion issues or a cause has been decided in some other case involving a similar issue that is dispositive. It could also mean that a Justice interested in the case has not been able to secure enough votes for a grant and is attempting to persuade other Justices to go the *per curiam* route.

F. Voting on Disposition at Briefs on the Merits Stage

1. Dispositions Available

Once the case has been fully briefed on the merits, by far the most common dispositions are to "grant," "deny" or "*per curiam*." Less common at this stage is a decision to dismiss the case for want of jurisdiction. Even more rare is a decision to "refuse" the petition. The Court may also vote to "hold" the petition pending issuance of a *per curiam* opinion or the decision of a cause.

2. Impact of Study Memo on Disposition

The law clerks are asked to recommend a disposition when they prepare a study memo. However, it is frequently the case that the Justices decline to follow the recommended disposition. Generally speaking, law clerks tend to focus more on whether there was error than on whether the issue involved is important to the development of the state's jurisprudence. Thus, a law clerk may recommend "deny" because, in the clerk's opinion, the court of appeals committed no error, when, in the view of the Justices, the core issue is of sufficient jurisprudential importance to warrant review regardless of the merits.

Thus, notwithstanding the law clerk's recommended disposition, the Justices independently scrutinize whether to exercise their discretionary jurisdiction in a particular case. Nonetheless, the study memo plays a pivotal role in the decision whether to grant or deny a petition, since it is to the memo that the Justices will typically first turn in this decision making process.

VII. ORIGINAL PROCEEDINGS: PETITIONS FOR WRIT OF MANDAMUS AND HABEAS CORPUS

As discussed in passing above, two major exceptions to the standard conveyor belt system for petitions are petitions for writ of mandamus in which a motion for temporary or emergency relief has been filed and petitions for writ of habeas corpus. All petitions filed in original proceedings are not held in the Clerk's Office, but instead are immediately forwarded to the Mandamus Attorney. The Mandamus Attorney reviews each original proceeding to determine whether it requires immediate attention, or whether it can be circulated in the ordinary course (i.e. treated like a petition for review that has been forwarded). The Mandamus Attorney will ordinarily treat a petition for writ of mandamus that is accompanied by a motion for emergency or temporary relief as an expedited matter and make a recommendation to the Court. Likewise, petitions for writ of habeas corpus are usually handled on an expedited basis by the Mandamus Attorney. Once briefs on the merits are requested in these matters, they are usually assigned to a chambers for a study memo.

The briefing requirements for original proceedings are similar to those for petitions for review. But there are some important differences. For example, petitions in original proceedings must contain a certification signed by the person filing the petition that he or she has reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record. TEX. R. APP. P. 52.3(j). And the person filing the petition must also file with the petition a record containing certified or sworn copies of every document material to the claim for relief, as well as a properly authenticated transcript of any relevant testimony from any underlying proceeding, including any exhibits offered into evidence. TEX. R. APP. P. 52.7. Be sure to read Texas Rule of Appellate Procedure 52 carefully whenever you prepare and file a petition or brief in an original proceeding.

VIII.PARENTAL TERMINATION CASES

Parental termination cases are handled on an expedited basis by the Mandamus Attorney. Briefing deadlines and extensions of briefing deadlines are usually halved.

IX. DIRECT APPEALS

The first step in filing a direct appeal is filing a statement of jurisdiction along with the record. Rule 57.3 states that the appellant must file with the record "a statement fully but plainly setting out the basis asserted for exercise of the Supreme Court's jurisdiction." Tex. R. App. P. 57.3. The appellee may file a response within 10 days after the date the statement is filed. After the Supreme Court receives the statement of jurisdiction and the record, it will either note probable jurisdiction or the appeal will be dismissed. Tex. R. App. P. 57.4. If the Court notes probable jurisdiction, the parties must file briefs. Tex. R. App. P. 38.

It is important to note that the briefing requirement is under Rule 38, rather than the briefing requirements for petitions for review under Rule 53. If the Court declines jurisdiction, "any party may pursue any other appeal available at the time when the direct appeal was filed." Tex. R. App. P. 57.5. This appeal must be perfected within 10 days after the dismissal of the direct appeal. *Id*.

See Justice Nathan L. Hecht, TEXAS SUPREME COURT PRACTICE MANUAL, State Bar of Texas (2005).

When filing a direct appeal, you should assist the Supreme Court Clerk's Office by filing a docketing statement along with your statement of jurisdiction and record—otherwise the Clerk's Office will not have all of the necessary case information. Any docketing statement used by the courts of appeals will suffice.

Direct appeals are sent to both the Mandamus Attorney and the Court. The Mandamus Attorney is responsible for making a recommendation regarding whether to issue an order noting probable jurisdiction.

X. MOTIONS (OTHER THAN REHEARING MOTIONS)

A. Motions to Extend Time ("METs")

The Court has assigned METs to the Clerk for disposition. The Court developed a set of procedures to ensure consistent disposition of such motions, which are set our below.

Motions for extension of time filed must have a certificate of conference and should make clear in the title or body of the motion whether the motion is opposed or unopposed. TEX. R. APP. P. 10.1(a)(5). Additionally, each MET to file a petition for review must provide, among other things, the name of the court of appeals, the date of the court of appeals' judgment, and the case number and style of the case in the court of appeals. . TEX. R. APP. P. 10.5(3). And Rule 10.5(b)(3)(D) was added in 2008 to require the MET to include the date every motion for rehearing or en banc reconsideration was filed, and either the date and nature of the court of appeals' ruling on the motion, or that it remains pending. A model MET is provided in the Appendix.

The following general rules apply to Unopposed METs for Petitions for Review. If the MET is

opposed, the Clerk's Office will inquire whether opposing counsel intends to file any opposition. If it is not clear from the certificate of conference whether the MET is opposed, the Clerk's Office will call the movant and, if necessary, the nonmovant. If no certificate is present, the Clerk requests a certificate before disposing of the motion. Finally, no MET to file a petition for review is ever denied without the Court's approval.

1. Unopposed MET for Petition for Review

As a general rule, the first MET will be granted for up to 30 days. A second will also be granted for up to 30 days, but the grant letter will include "standard" language informing the movant that further requests for extensions will be disfavored. Parental termination cases represent the exception to the general rule—all standard times for extensions are halved.

2. Unopposed MET for Response to Petition

If the response was requested by the Court, the requesting Justice(s) will be asked if they want to grant the extension. If so, it will be granted. If the response was not requested by the Court, the MET will be granted for up to 30 days; the grant letter will include the standard language about further requests being disfavored.

3. Unopposed MET for Reply to Response to Petition

These METs will usually be granted for up to 30 days and standard language about further requests being disfavored is included.

4. Unopposed MET for Petitioner's and Respondent's Briefs on the Merits

These METs are granted for up to 30 days and the standard language about further requests being disfavored is included.

5. Unopposed MET for Petitioner's Reply Brief on the Merits

The Clerk's Office will inform the chambers responsible for the study memo that an unopposed motion to file the reply has been filed and that the motion will be granted unless the chambers instructs otherwise. Normally only short extensions (e.g. 10 to 15 days) will be granted. Extensions longer than 30 days will rarely, if ever, be approved. Standard language about further requests being disfavored is included.

6. Unopposed MET for Motion for Rehearing

a. Of a Cause or *Per Curiam* Decision

The chambers that authored the majority opinion or the *per curiam* opinion will decide whether to grant the MET.

b. Of a Denied Petition

The Clerk's Office processes these METs. The first MET is granted for up to 30 days; the letter includes the standard language about further requests being disfavored.

B. Motions to Abate

Motions to abate, whether for bankruptcy or settlement purposes, are presented to the Court for action. The motion is usually accompanied by a short memo. The Clerk may prepare the memo if time permits. Otherwise, the memo is prepared by the motions attorney for the week in which the motion is filed. But if the case has already been assigned to a particular chambers for preparation of a study memo or an opinion, that chambers will usually prepare the memo. The attorney authoring the memo will normally state that a particular disposition will be effected at a certain time unless one of the Justices objects.

C. Motions to Dismiss Pursuant to Settlement

Parties may jointly move to dismiss if a case is settled. TEX. R. APP. P. 56.3. Depending on the particulars of the motion, the Court will dismiss the petition, vacate the judgments of the lower courts, and remand the cause to the trial court for rendition of judgment pursuant to the settlement or other requested disposition. *Id.* If the dismissal requires granting the petition in order to act on the lower court(s)' judgments, the Court will issue a judgment and a mandate. Settlements may not be conditioned upon the Court's vacating the court of appeals' opinion. *Id.* Asking the Court to vacate the court of appeals' opinion is probably futile as the Court almost never grants such a request.

D. Other Motions

Other motions are forwarded to the motions attorney for the week in which the motion is filed—with two exceptions. First, if additional motions are filed in a matter, the attorney who processed the first motion will process all additional motions in that matter. Second, if a matter has been assigned to a chambers for preparation of a study memo or writing an opinion, that Justice will dispose of all motions in that matter. The motions attorney assignment rotates weekly in seniority order.

XI. SUBMISSION WITH AND WITHOUT ORAL ARGUMENT

A. Submission Without Oral Argument

1. Votes Required

By vote of 6 of the 9 Justices, a petition for review, mandamus or habeas corpus may be granted and the case decided without oral argument. TEX. R. APP. P. 59.1.

2. Manner of Disposition without Oral Argument

Cases decided without oral argument are typically, but not invariably, disposed of by *per curiam* opinion. A *per curiam* opinion becomes a signed opinion in the event of a dissent or concurrence.

3. Reasons for Deciding Case Without Oral Argument

Summary disposition without oral argument provides a means for the Court to engage in error correction in cases not involving issues of substantial jurisprudential importance. It also provides a means for the Court to resolve cases involving the application of well-developed legal principles. The Court may also elect to issue a signed opinion without oral argument in special circumstances, such as where the case is time sensitive or where relief is being granted to a *pro se* petitioner.

4. Assignment of Opinion

If the Court votes to issue a *per curiam* opinion, the Court may agree to assign the case to a Justice with special familiarity with the issues, *e.g.*, the Justice in the chambers that prepared the study memo. If that Justice is opposed to the disposition favored by the 6 or more Justices who voted in favor of issuing a *per curiam* opinion, the Justice will nonetheless generally agree to accept the assignment of preparing the opinion. In the rare case where the Justice feels strongly enough to decline that assignment, the Chief Justice will assign the task of preparing the *per curiam* opinion to another Justice based on the amount of interest shown by and the amount of time available to that Justice.

B. Submission With Oral Argument

1. Votes Required

By vote of four of the nine Justices in the case of petition for review, or the vote of five Justices in the case of mandamus or habeas corpus, the Court may grant review, set the case for oral argument, and notify the parties of the submission date. TEX. R. APP. P. 59.2.

2. Drawing of Opinions

The Court usually conducts a random draw for opinions when it has granted 9 or more petitions that are to be scheduled for oral argument (which, after granting, become "causes"). Before conducting the draw, the Administrative Assistant prepares blue index cards with the cause number and style of each case written on one side of the card. The Administrative Assistant turns the cards face down, shuffles the cards, and fans the cards out while continuing to hold the cards face down. Beginning with the most junior Justice, each Justice then draws one card from the Administrative Assistant's hand. Once all the cards are drawn, the Administrative Assistant records the results of the draw. The Justice who draws the case will ultimately end up writing the majority, a concurring or dissenting opinion, depending on the various Justices' views of the case following oral argument.

3. Preparation for Oral Argument

The practices of the Justices in preparing for oral argument vary. Some will look to the study memo, others to the briefs on the merits, some to both, and still others will have their chambers prepare bench memos. The Justice who has drawn the case will typically devote special effort to preparation, since he or she will have the first opportunity to try to fashion a majority opinion. There is no formal pre-submission conference—by this stage, most of the Justices have a fairly good sense of their colleagues' views of the case based on discussions at one or more conferences in which the Court considered whether to grant the petition.

4. Post-submission Conference

The Court's first formal post-argument discussion of the case occurs in the first scheduled conference following the argument. Because the Court generally schedules conferences only approximately once per month, this means that the Court could discuss up to nine arguments at a regularly scheduled conference. Assuming that the Justice who has drawn the case is in the majority after the post-submission conference, he or she will draft a majority opinion for the Court's review. If it is clear at the post-submission conference that a dissent is likely, the Chief Justice may request that a Justice begin drafting the dissent.

5. Post-submission Briefing

The appellate rules say nothing about post-submission briefing and the Court has no formal policy on the subject. The Court's informal practice is to accept any post-submission briefing that is filed. The Justices prefer brevity at this stage. Post-submission briefs that merely rehash arguments already made are not welcome. Such a brief may be struck if objected to by opposing counsel. Briefs that

provide the Court with pertinent new authorities are welcome. Briefs that more fully or accurately respond to specific questions asked at oral argument can also be viewed as useful. Most of the Justices will read post-submission briefs.

X. CIRCULATION OF DRAFT OPINIONS AND DISPOSITION OF CASE

A. Opinions Issued Without Oral Argument

1. *Per Curiam* Opinions

When the Court votes to issue a *per curiam* opinion, a draft opinion is usually circulated within 60 to 120 days. Because the *per curiam* opinion is almost invariably assigned to the same chambers that prepared the study memo, this expedites drafting of the opinion. On some occasions, contrary views appear after circulation of the draft *per curiam* opinion so that the case is ultimately set for oral argument or becomes a signed opinion.

2. Signed Opinions Without Oral Argument

On rare occasions, a dissent or concurrence may appear after circulation of a draft *per curiam* opinion, but the decision is made not to set the case for oral argument. In such a case, the draft *per curiam* opinion is converted into a signed opinion without oral argument, accompanied by the separate opinion. On other rare occasions, the Court has issued signed opinions without oral argument and without a dissenting opinion.

B. Opinions Issued After Oral Argument

1. Circulation of Draft Opinions

A draft opinion of the Court in a cause is generally circulated within 4 to 6 months after oral argument. The opinion is placed on the agenda for discussion at the first conference following circulation of the opinion. The Chief Justice calls on the author of the opinion to explain why the opinion should be embraced by a majority of the Court. Then others around the table are given an opportunity to express their views. Following the conference, any concurring or dissenting opinions are circulated within 60 days. These opinions are scheduled and discussed at conference in similar fashion. At conference, on some occasions, what was going to be the majority opinion no longer attracts a majority of the Justices and, thus, the opinion must be transformed into a dissent and vice versa. When any draft opinion is circulated to the Justices, it is frequently the case that various Justices at conference suggest changes that are changes ultimately made by the author. A Justice may pull an opinion for further study if that Justice is unsure whether to join the opinion or to suggest changes.

2. Disposition

After the majority writing garners 5 or more votes, and the majority supporters believe that any separate writings have been adequately addressed, the Court will determine that the opinion should be issued. The opinion and judgment will issue on the next regularly scheduled Friday's orders.

XII. MOTIONS FOR REHEARING

A. Of Denial of a Petition

1. Distribution

A motion for rehearing of a denial of a petition for review is sent directly to the chambers of all the Justices once it is filed and placed on the next Tuesday's vote sheet.

2. Disposition Without Conference

The Tuesday following its distribution to all the Justices, the motion is listed on the "purple vote sheet" along with all other matters requiring disposition by the entire Court. Like petitions, a motion for rehearing is thereby placed on a "conveyor belt"—if no Justice takes an interest, the motion will be summarily denied in the orders issued by the Court 31 days following its initially being placed on the conveyor belt.

3. Disposition With Conference and Required Votes

It takes the vote of only one Justice to pull a motion for rehearing off the conveyor belt. If the motion proceeds to conference, it takes 4 votes to grant a motion for rehearing of a denial of a petition for review, and 5 votes to grant rehearing of a denial of a mandamus or habeas corpus petition. A study memo could be assigned at this point if 3 Justices vote for it. This would be most likely to happen if no study memo was prepared the first time around. But even if a study memo was previously prepared, the Court could assign a second study memo, although this rarely occurs. If the motion fails to garner the 3 votes required for a study memo or the 4 votes required for a grant, some other affirmative action by the Court is required to save the motion from being denied—absent an order granting the motion, the rehearing motion will be overruled by operation of law 180 days after filing.

B. Of a Cause or *Per Curiam* Decision

1. Distribution and Initial Processing

Like a motion for rehearing of a denial of a petition, a motion for rehearing of a cause or *per curiam* decision is distributed to all members of the Court once it is filed. A motion for rehearing of a cause or PC, however, is accorded additional special treatment. Such a motion is initially processed by the chambers that drafted the majority opinion in the case.

The staff prepares a brief memo to the Court summarizing and analyzing the arguments on rehearing. The deadline for preparing the rehearing memo is 30 days after filing of the motion for rehearing. This deadline is not affected by the filing or non-filing of a response. The memo writer usually makes a recommendation to grant or deny the motion. Once completed, the rehearing memo is circulated and the matter is placed on the agenda for discussion at the next scheduled conference. If the rehearing motion raises matters that the Court believes merit a response—such as factual matters that were not fully addressed in the Court's opinion—the Court will request a response. In no event will the Court grant rehearing without requesting a response if one has not already been filed. TEX. R. APP. P 64.3. The current practice is that only the chambers responsible for preparing the rehearing memo can request a response.

2. Participation by New Justices in Rehearing

The former practice was that Justices who were not sitting on the Court at the time the initial opinion and judgment were issued, could not participate in the decision to grant or deny rehearing. That practice has changed. New Justices are now permitted to decide rehearing motions, regardless whether they participated in the initial decision.

3. Disposition and Required Votes

Motions for rehearing of causes or PCs are infrequently granted. The Court may re-issue the opinion with changes to address issues raised by the motion for rehearing, but unless the Court changes the judgment, it will generally deny the motion for rehearing. Only rarely will a rehearing motion result in the judgment being altered. It takes 5 votes to grant a motion for rehearing of a cause or PC.

C. No Successive Motions

If the Court denies a motion for rehearing, the Court ordinarily will not consider a second motion for rehearing. TEX. R. APP. P. 64.4. The Court will consider an additional motion for rehearing if the Court modifies its judgment, vacates its judgment and renders a new judgment, or issues a different opinion. *Id*. When the Court modifies its opinion without modifying its judgment, the Court will ordinarily deny a second motion for rehearing unless the new opinion is substantially different from the original opinion. *Id*. (Notes and Comments to 2008 changes).

CONCLUSION

The Court's internal operating procedures have remained largely unchanged over the past several years. Although the Court approved substantial revisions to the Rules of Appellate Procedure in 2008, these changes brought little change to the Court's internal operating procedures. But the Court has received a proposal to make the petition process more similar to the process used by the United States Supreme Court. This proposal would remove the two-stage briefing process for all but granted cases. In other words, merit briefing would only be requested for cases that are granted and set for argument. The Court is taking this proposal seriously. If adopted, the proposal would have a major impact on the Court's internal operating procedures.