

**AUSTIN COURT OF APPEALS
PRO BONO PILOT PROGRAM
PAMPHLET**

CIVIL APPEALS

**THE COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS AT
AUSTIN, TEXAS**

PREPARED BY

THE STATE BAR OF TEXAS APPELLATE SECTION

PRO BONO COMMITTEE

SEPTEMBER 1, 2007

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I. INTRODUCTION

This pamphlet from the State Bar of Texas Appellate Section's Pro Bono Committee ("Committee") is designed to explain the Texas Rules of Appellate Procedure and practices that apply in civil appeals in the Third District Court of Appeals at Austin, Texas ("Third Court of Appeals" or "Court"). We have prepared this pamphlet to help laypersons and attorneys with little or no appellate experience. But it is not intended to replace the Texas Rules of Appellate Procedure and should not be cited as legal authority. Litigants are required to comply with the rules and the case law. Litigants should consult the Court's own practice guide entitled, "*Practice Before the Court*," which can be found at: www.3rdcoa.courts.state/texas/rules/procedures.asp. ("Third Court Practice Guide")

This pamphlet reflects the rules and case law as they exist in **September, 2007**. The rules and case law are always subject to

change and should be consulted for changes.

This pamphlet is available in an alternative format, upon request.

All documents submitted to the court must be filed with:

In Person:

Clerk, Court of Appeals
209 W. 14th Street, Room 101
Austin, TX 78701

By Mail:

Clerk, Court of Appeals
P.O. Box 12547
Austin, TX 78711-2547

A copy of all documents filed with the court must be served (mailed or hand delivered) on all other parties to the appeal. TEX. R. APP. P. 9.5. All papers filed with the court must be 8 ½ x 11 inches. TEX. R. APP. P. 9.4(b). The typeface or font size for the document must be at least 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or at least 13 point or larger proportionally spaced typeface. TEX. R. APP. P. 9.4(e). Rule 9 contains other filing requirements as well.

II. WHAT IS AN APPEAL?

An appeal is a review of what happened in the trial court to determine whether error occurred and, if so, whether the appellant¹ is entitled to relief. An appeal is not a new trial. You cannot present evidence, call witnesses, or conduct discovery in an appeal. The court of appeals decides an appeal strictly on the basis of the trial court record, briefs, and occasionally oral argument by the parties. Generally, a complaint about error in the trial court must have been brought to the trial court judge's attention before the court of appeals will review it. TEX. R. CIV. P. 33.1.

III. WHEN CAN YOU APPEAL?

A. Appeal as of Right

You have a right to appeal from a final judgment or final order of a trial court.

¹ An "appellant" is the party who files a notice of appeal. TEX. R. APP. P. 3.1(a). An "appellee" is the party adverse to the appellant. TEX. R. APP. P. 3.1(c).

A judgment or order is final if it disposes of the entire matter in litigation. If the order or judgment decides only some of the issues or claims, but not all of them, it is not final. However, if it decides all of the issues as to one party, that portion can be severed to become final and appealable. In addition, the judgment or order must have been intended to be the final document in litigation. This is determined by reading the judgment or order to determine whether the judge considered it to be a final judgment or planned to issue another document terminating the case. The appellate deadlines discussed below begin to run on the date the judgment is signed by the trial court.

B. Interlocutory Appeals

Some rulings that are interlocutory, meaning that they are not final and conclusive on the merits. These interlocutory orders may also be appealed if the legislature has provided for an interlocutory appeal. Examples include

temporary injunctions, orders appointing a receiver or trustee, or orders as to certification of class actions.² The time for appealing in one of those cases is much shorter than in a final judgment appeal—typically 20 days (*see* TEX. R. APP. R. 26.1(b))—and begins to run when the trial court signs the order.

IV. TIME LIMITS FOR APPEAL

The filing of a timely notice of appeal is necessary to give the court of appeals jurisdiction, which is the power and authority to consider your appeal. The time limits depend on the type of case being appealed. An appeal in a civil case must be filed within 30 days of date of the judgment or order appealed from. That period of time may be automatically extended to 90 days from the date of the judgment if any party timely files one or more qualifying post

² *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 51.014(a).

judgment motions, such as a motion for new trial, a motion for judgment notwithstanding the verdict, or a request for findings of fact and conclusions of law, where appropriate.³ TEX. R. CIV. P. 26.1(a).

As noted, an interlocutory appeal must be filed within 20 days of the issuance of the appealable order, and this time period cannot be extended by the filing of a post-trial motion or request. TEX. R. APP. P. 26.1(b), 28.1.

Sometimes, both sides want to appeal from different alleged errors in the same judgment. If your opponent files an appeal, you may file a “cross-appeal” to assert any errors you feel the trial court made as to your side of the case. Any cross-

³ The timetable is extended only when the post-judgment request is appropriate. For example it is not proper to file a request for findings of fact and conclusions of law as to a summary judgment. *See generally Ford v. City of Lubbock*, 76 S.W.3d 795, 796 (Tex. App.—Amarillo 2002, no pet.). Therefore, a request for such findings and conclusions, even if timely filed, will not extend the appellate deadline.

appeal must be filed within the later of (a) the period established for filing the notice of appeal or (b) 14 days after the filing of the notice of appeal. TEX. R. APP. P. 26.1(d).

The time to file a civil appeal or cross-appeal can be extended by the appellate court by filing a motion within 15 days of the deadline for appeal and showing the grounds for the extension. TEX. R. APP. P. 10.5(b), 26.3. We recommend that you do everything you can to file your appeal within the deadlines set forth in the Rules because extensions to file a late appeal are not automatically granted.

V. HOW TO START AN APPEAL

To “perfect” or start a civil appeal, you must file the following documents with the trial court: (i) notice of appeal; (ii) designation of items to be included in the Clerk’s Record; and (iii) a request for the Reporter’s Record. The latter two items are important to insure that a proper record of

the trial court proceedings is provided to the Court of Appeals so that it may consider your case. These requests are discussed further at part VI.

At the same time, you must also file the following documents with the Court of Appeals: (i) copy of the notice of appeal; (ii) Docketing Statement (with a copy of the judgment or order appealed from attached); and (iii) the filing fee. Each of these requirements will be discussed in more detail below.

A. The Notice of Appeal

A notice of appeal must be filed with the clerk of the *trial* court in which the judgment or order appealed from was entered. TEX. R. APP. P. 25.1(a). A copy of the notice of appeal must also be sent to the Clerk of the Third Court of Appeals and another copy must be served (mailed or delivered by hand) on the opposing party. The notice of appeal must contain all of the following information: (1) the case name and number of the trial court proceedings;

(2) a description of the judgment or order appealed from, including the date on which it was signed; (3) a statement that the party desires to appeal the order; (4) the court to which you are appealing—*i.e.*, Third Court of Appeals; (5) the name of each party appealing; and (6) if the appeal is from an interlocutory order, a statement that it is interlocutory. TEX. R. APP. P. 25.1(d). A sample form of a notice of appeal is attached as Form 1.

B. The Docketing Statement

At the same time that the notice of appeal is filed, the appellant must file with the court of appeals four (4) copies of a Docketing Statement on a form available from the Third Court of Appeals Clerk (<http://www.3rdcoa.courts.state.tx.us/forms/forms.asp>), and send a copy to the opposing party. *See, e.g.*, TEX. R. APP. P. 32.1. (A copy of the Third Court of Appeals' Docketing Statement is attached as Form 2). Each court of appeals has its own docketing statement, and these forms typically seek

detailed information regarding the appeal, such as the names and contact information of all parties to the trial court proceeding, the trial court clerk, the court reporter, as well as ask a number of procedural and substantive questions about the case. It is important that you fill out this form accurately and completely, especially if you want your case to be considered for inclusion in the Pro Bono Pilot Program, which is discussed at part XIII, below.

C. Filing Fee

The appellant must also file with the docketing statement the \$175 fee for docketing the appeal. If you believe you are indigent (*i.e.* can't afford the fee), you should complete and return an affidavit of indigence (a sample form of which is attached as Form 3). Either the trial court or the Court of Appeals can determine indigence based on Texas Rule of Appellate Procedure 20.1, and the procedures for filing and contesting an affidavit of indigence are set out in that rule.

VI. THE RECORD

The record is a compilation of papers filed in the trial court in your case. It will include the written transcription of any pretrial and trial proceedings that are necessary to determine the appeal (“Reporter’s Record”), as well as documents such as the pleadings, motions, briefs, and any decisions, orders or judgments filed in the trial court (“Clerk’s Record”). The required and optional contents of these records are described in Texas Rule of Appellate Procedure 34.

A. The Clerk’s Record

As the appellant, you need to determine what parts of the trial court’s paper record should be included in the record on appeal. At or before the time you file your notice of appeal, you should prepare a list of the pleadings, motions, briefs, and other papers you believe the court of appeals may need to decide your issues on appeal. In most cases, the trial court clerk’s office will compile the

requested documents, sequentially paginate them (so that they are more easily cited or referenced by the parties), and send them to the Court of Appeals. Therefore, you want to include as much information about the documents you are requesting to be included as you can to assist the clerk, such as the date of filing, the complete name of the document, and docket entry number (if available). The designation of items for the Clerk’s Record must be filed with the district court and served on all parties. A sample designation form is attached as Form 4.

You must make arrangements with the trial court clerk to pay for the Clerk’s Record before it is due in the court of appeals. If you believe that you qualify for a waiver of these costs, then you need to file an affidavit of indigence with the trial court at or before the time you file your notice of appeal, as explained below in part XI.

If at any time before you file your brief, you discover that additional items are needed from the trial court's file, you can submit a letter request to the trial court's clerk requesting that a supplemental record be prepared. TEX. R. APP. P. 34.5(c)(1). A sample letter request is included as Form 5.

B. The Reporter's Record

At or before the time you file you notice of appeal, you must also request the trial court's court reporter to prepare a written transcription of the trial court proceedings that will be at issue in the appeal. TEX. R. APP. P. 34.6. This is known as the "Reporter's Record." *Id.*

The Reporter's Record is a word-for-word typewritten account of what was said in the trial court before the judge and/or jurors if there was a jury. If your case was decided solely on briefs or other written documents, and there was no hearing before the trial judge, you may indicate on the Docketing Statement that the Reporter's Record is not necessary to prosecute the

appeal. However, if you are challenging any part of the evidence below, such as the sufficiency of the evidence as to a jury's verdict or judge's finding, or otherwise need to refer in your brief to testimony or argument that was made in the trial court, you must order the Reporter's Record and make arrangements with the court reporter for payment. A sample form for requesting the Reporter's Record is attached as Form 6.

If you believe you are indigent and would like a waiver of the costs for preparation of the Reporter's Record, you should file a request for waiver of those costs in the trial court when you file your notice of appeal. *See* part XI, below.

VII. BRIEFS

A. The Appellant's Brief

Once both the Clerk's Record and the Reporter's Record have been filed in the Court of Appeals, the briefing schedule begins. The filing date for the appellant's opening brief runs from the date on which the record is complete with the Court of

Appeals, meaning that both the Clerk’s Record and the Reporter’s Record (if requested) have been filed.

You must file your appellant’s opening brief with the Court of Appeals no later than 30 days—20 days in an accelerated (interlocutory) appeal—after the record is complete. TEX. R. APP. P. 38.6(a).

The appellant’s brief is a written document explaining why you are appealing and what you think was wrong with the trial court’s decision. Texas Rule of Appellate Procedure 38.1 describes the necessary parts of an appellant’s brief. Your brief must have:

- (1) A list of the identities of parties and counsel in both the trial and appellate courts;
- (2) A table of contents and a table of cases, statutes, and other legal authorities discussed in your brief (The cases must be listed in alphabetical order.);
- (3) A statement of the case that concisely indicates the nature of the case, the course of proceedings below,

and the trial court’s disposition;

- (4) A statement of the issues or points of error presented for review;
- (5) A statement of the facts supported by record references;
- (6) An summary of the argument;
- (7) An argument section; and
- (8) A “prayer” or short conclusion that tells the Court what relief you are seeking.

TEX. R. APP. P. 38.1. In addition, you must either include with your brief or separately bind an “Appendix,” which contains certain required portions of the trial court’s record, such as the order appealed from and the text of any rule or statute on which the argument is based. The Appendix can also contain optional contents that you believe may be helpful to the Court when reviewing your brief. TEX. R. APP. P. 38.1(j). A good example is a copy of any contract between the parties if that contract forms the basis of the dispute.

Generally speaking, the Statement of the Facts should explain to the Court what the case is about and what happened in the trial court in objective terms—*i.e.*, without taking sides or making arguments. It should only present the facts from the trial court record that are relevant to the issues to be decided on appeal. ***You may not discuss facts that were never presented to the trial court or that are not included in the record.*** Every statement of fact must be accompanied by an appropriate reference to the record. As noted, the trial court clerk typically paginates the Clerk’s Record to make it easier to cite to specific pages.

When referring to the parties in your brief, you should use their names, rather than referring to their party designations. For example, use “Jane Smith” not “the appellant.” Doing so makes it easier for the Court to follow your arguments.

The appellant’s brief cannot be longer than 50 typewritten pages. TEX. R.

APP. P. 38.4. However, only the statement of the facts, the summary of argument and argument sections, and the prayer count toward the 50-page limit. TEX. R. APP. P. 38.4.

The brief must be printed on 8½ by 11 inch paper that is white (or nearly white) and opaque, meaning that it is not transparent. TEX. R. APP. P. 9.4(b). The text must be double-spaced (except as to block quotes, which can be single-spaced), with one-inch margin on all sides. TEX. R. APP. P. 9.4(c) & (d). As noted above, you can use both ten-character-per-inch, “nonproportionally spaced Courier typeface” (each character uses an equal amount of horizontal space) or 13-point or larger font if you use “proportionally spaced” typeface (the horizontal space used by each character varies). TEX. R. APP. P. 9.4(e). Each brief must be signed by the person filing it. TEX. R. APP. P. 9.1.

B. The Appellee’s Brief

After the appellant’s opening brief is filed, the time for filing the appellee’s brief begins to run. The appellee must file his or her brief 30 days—20 days in an interlocutory appeal—from the service of the appellant’s brief. TEX. R. APP. P. 38.6(b).

If you are the appellee, and oral argument is not scheduled in the appeal, your appellee’s brief is your only opportunity to tell the court why the trial court’s decision should be affirmed or allowed to stand. The appellee’s brief must have the same parts as the appellant’s brief, *except* that a statement of the issues, a statement of the case, and an appendix are optional. TEX. R. APP. P. 38.2. The page limit or word limit for the appellee’s brief is the same as that for the appellant’s brief. TEX. R. APP. P. 38.4. A signature by the person filing the brief is also required. TEX. R. APP. P. 9.1.

C. The Appellant’s Reply Brief

The appellant’s reply brief may be no longer than 25 pages. TEX. R. APP. P. 38.4. It must be filed within 20 days of service of the appellee’s brief. TEX. R. APP. P. 38.6(c). If you are the appellant, and you do not intend to submit a reply brief, you should alert the Court that a reply brief will not be filed.

D. Number of Briefs

You must file an original and seven copies of your brief and appendix with the Third Court of Appeals and serve the other party or parties with one copy each. *See* Third Court Practice ¶ 26.

E. Brief Covers

Each brief or appendix must have opaque, durable front and back covers, which should not be plastic or dark colored (*e.g.*, red, black, or dark blue) so that the clerk can affix a permanent and legible file-stamp to the cover showing the date of the filing. TEX. R. APP. P. 9.4(f). If you file your appendix as a separate document,

rather than attaching it at the back of your brief, it must also have a durable light-colored cover. TEX. R. APP. P. 9.4(h). The front cover of every copy of your brief (and the cover for any separately bound appendix) must list:

(1) the style of the case (the names of the parties on appeal);

(2) the case number for the case assigned by the Court of Appeals;

(3) the title of the document and the name of the party filing it;

(4) the name, mailing address, telephone, facsimile number, and any State Bar identification number for the lead counsel, if any, filing the brief; and

(5) *if you want to request oral argument*, you must state “ORAL ARGUMENT REQUESTED” on the cover of the brief.

TEX. R. APP. P. 9.4(g). It is also advisable to identify the trial court and cause number in that court on the cover of your brief.

A brief must be securely bound “so as to ensure that it will not lose its cover and fall apart in regular use.” TEX. R. APP. P. 9.4(f). We recommend either using a heavy strength staple on the left top corner or durable GBC binding along the left side of the brief. Rule 9.4(f) requires that it be bound in such a way that it lays flat when open.

VIII. MOTIONS

A motion is a written request asking the Court to make a special ruling in the appeal. Either the appellant or the appellee may file a motion with the Court. For example, if you want to obtain an extension of time to file your brief, you would make your request by filing a motion (original and four copies) with the Court of Appeals and serve a copy of the motion on the other party or parties to the appeal. Third Court Practice ¶ 25. Your motion must state the reasons why you are making a particular request. TEX. R. APP. P. 10.1. Be specific about what relief you need and why you

need it. Rule 10.5.(b) sets forth specific requirements for motions for extensions of time.

If your motion will not be opposed, you should state that it is “Unopposed” in the title of the motion. Every motion must contain a certificate stating that you have conferred with the other parties and that they do or do not oppose the relief sought. TEX. R. APP. P. 10.1(a)(5). If you are unable to reach your opposing party or their counsel (if they are represented), then state in your certificate that you have made reasonable attempts to confer with the other parties to determine their position on the substance of the motion. Motions can be rejected by the Clerk’s office if the certificate of conference is not included.

Do not submit a proposed order. A sample motion for extension of time to file a brief is attached as Form 7.

The Court will inform you of its decision by mailing you and the other

parties to the appeal notice of the order granting or denying your motion. The Court’s rulings are also posted on the Court’s website under the case information/docket sheet for the appeal.

IX. THE DECISION PROCESS

Once briefs have been filed by both sides to the appeal and any oral argument has occurred, the case will be submitted to the court for decision. The Third Court of Appeals’ website has a special page showing the submission dates for causes submitted after oral argument and causes submitted on the briefs, and it can be found at: <http://www.3rdcoa.courts.state.tx.us/opinions/submission.asp>.

A. Oral Argument

Because of the large number of cases filed in the Court of Appeals, the Court cannot schedule oral argument in every case. In the majority of cases, the appeal will be decided upon review and consideration of

the briefs and record alone, without an oral hearing before the judges.

If the Court believes that oral argument will assist its decision, it will advise the parties. The person presenting oral argument should be thoroughly familiar with the record, the legal issues and arguments presented, and the authorities cited by both parties when making an oral argument. Remember that the purpose of the argument is to answer the Court's questions, not to make a speech about why you should win.

B. Opinion

Decisions in most appeals are made by a panel of three judges of the Court. The judges who consider your appeal will prepare a written opinion or order explaining the Court's final decision. This decision will be mailed to you. You can also sign up for the "Case Mail" service on the Court's website, which will send you an email notice when certain events occur with respect to

your case, such as the issuance of an opinion.

X. COSTS IN THE COURT OF APPEALS

Texas Rule of Appellate Procedure 43.4 explains the procedure for awarding costs by the Court of Appeals. "Prevailing parties" are generally awarded their costs on the appeal. TEX. R. APP. P. 43.4. Consequently, if you are the appellant, and the Court of Appeals reverses the trial court's judgment or order, it should award you your appeal costs from the appellee. If you are the appellee, and the Court dismisses the appeal or affirms the trial court's judgment or order, the Court will probably order that you recover your costs from the appellant. The Court may decide not to award costs to either side if the trial court's order is affirmed in part and reversed in part. It also has the discretion to tax costs otherwise as required by law or for good cause. TEX. R. APP. P. 43.4.

You need to check the judgment, which is a separate document from the Court's opinion, to insure that costs were awarded appropriately. If you want to request the Court to reconsider the award of costs, you must do so in the form of a motion for rehearing filed within 15 days after the Court of Appeals judgment is rendered. TEX. R. APP. P. 49.1

Recoverable costs include:

- (1) Fees charged by the Clerk of the Court;
- (2) Cost of the preparation of the Clerk's Record and Reporter's Record;
- (3) Other costs as directed by the Court.

If the Court of Appeals finds that an appeal or cross-appeal is frivolous, it can award to the successful party costs, fees and reasonable attorney fees on appeal.

XI. INDIGENCE— INABILITY TO PAY COSTS OF APPEAL

If you believe you cannot pay the costs of an appeal—meaning the filing fee,

Clerk's Record, and/or Reporter's Record—you may be permitted to proceed on appeal without paying these costs in advance by filing what is called an affidavit of indigence. Texas Rule of Appellate Procedure 20.1 sets forth the procedure and requirements for establishing indigence, or inability to pay.

If you have not previously filed an affidavit of indigence in the trial court, you must do so either with or before the time for filing your notice of appeal. TEX. R. APP. P. 20.1(c)(1). The mandatory contents of that affidavit are listed in Rule 20.1(b), and a suggested form is attached as Form 3.

The clerk and court reporter of the trial court and any party may challenge your claim of indigence by filing a contest to the affidavit. If such a contest is filed, then it is your burden to prove that you are entitled to proceed on appeal without paying these costs. TEX. R. APP. P. 20.1(e) & (g). If the trial court determines that you can pay or

give security for some of the costs, it will order you to do so. TEX. R. APP. P. 20.1(k).

If your claim of indigence is not challenged or if the trial court sustains your claim against a contest—by a written order—and you file a timely notice of appeal, then you may proceed without paying the costs of appeal in advance. TEX. R. APP. P. 20.1(a).

XII.VOLUNTARY DISMISSAL

If an appellant desires to dismiss his or her appeal at any time prior to a decision, the parties can agree to such dismissal or the appellant can file a motion for voluntary dismissal. TEX. R. APP. P. 42.1. The dismissal will usually be granted unless it would prevent the other party from seeking relief to which it is entitled. TEX. R. APP. P. 42.1(a). Unless the parties otherwise agree, the Court will tax costs against the appellant. TEX. R. APP. P. 42.1(d).

XIII. PRO BONO PILOT

The Third Court of Appeals, in conjunction with the State Bar of Texas Appellate Section Pro Bono Committee (“Pro Bono Committee”), is conducting a Pro Bono Pilot Program to place a limited number of civil appeals with appellate counsel who will represent the appellant before this Court. The goal of the program is to match clients who are financially unable to obtain legal representation with volunteer lawyers who agree to serve without expectation of compensation for their service.

If you lack the financial means to pay for an appellate attorney and indicate your desire to be included in the Pro Bono Pilot Program, as explained in this Pamphlet, you may be considered for participation in the program. Even if you had paid counsel in the trial court, you can indicate your interest in seeking a pro bono attorney through this Pilot Program if you can no longer afford an attorney to represent

you on appeal. **PLEASE NOTE:** There is no guarantee that, if you submit this case for possible inclusion in the Pro Bono Pilot Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego seeking other counsel to represent you in this proceeding.

A. The Selection Process

As explained above, the Docketing Statement is one of the first documents that you file when you start an appeal. *See* part V.B, above. The Third Court of Appeals' Docketing Statement has a brief description of the Pro Bono Pilot Program and a list of questions for you to answer if you would like for your case to be considered. If you so indicate your interest, a copy of your Docketing Statement will be forwarded to the Pro Bono Committee for screening. As a result, it is very important that you fill out the Docketing Statement carefully and completely so that the Pro Bono Committee

will have as much information as possible in considering your appeal.

By filling out the request for consideration, you are agreeing that members of the Pro Bono Committee can contact the counsel of record in the trial court to ask for clarification of questions or issues as to your case. These conversations will be kept confidential and used solely for purposes of the committee's selection process. You are also authorizing the Pro Bono Committee to transmit basic, publicly available, facts about your case via the Internet to its pool of volunteer lawyers in an attempt to find an appellate lawyer to take your case.

The Pro Bono Committee screens and selects civil cases for inclusion in the Program based upon a number of discretionary criteria, including the financial means of the appellant. The committee uses 175% of U.S. Poverty Guidelines as a benchmark for determining whether an

appellant qualifies for free legal services. These guidelines are published by the U.S. Department of Health and Human Services, and the following chart sets forth the relevant numbers:

Persons in Family or Household	175% of Federal Poverty Guidelines
1	\$17,150.00
2	\$23,100.00
3	\$29,050.00
4	\$35,000.00
5	\$40,950.00
6	\$46,900.00
7	\$52,850.00
8	\$58,800.00

SOURCE: The 2006 Federal Poverty Guidelines are taken from Federal Register, Vol. 71, No. 15, January 24, 2006, pp. 3848-3849. Further information can be found at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

If you have not already submitted an affidavit of indigence in the trial court, *see* part XI above, you may be asked to submit financial information as a condition of your participation in the Pro Bono Pilot Program.

If you are uncomfortable with having your financial information in the Court’s file, you can submit this information in a sealed envelope, marked “Confidential,” to the Pro Bono Committee. Although your ability to pay for legal counsel is not the only factor the Committee considers as to your participation in the Pilot Program, it is nonetheless a significant factor in the committee’s decision-making process.

There are a number of other factors that the Pro Bono Committee considers in deciding whether to place an appeal in the Pilot Program, including the number of appeals currently in the program, the number of available volunteer lawyers, and the issues presented. Based upon a review of these and other factors, the Pro Bono Committee makes a recommendation for each case. If the Committee recommends that a case be included in the Pilot Program and a volunteer lawyer agrees to take the case, you will receive a letter from the

Committee within approximately 30-40 days of submitting your Docketing Statement notifying you of the match.

B. The Attorneys

The Pro Bono Committee has undertaken a substantial recruiting effort to enlist pro bono appellate lawyers willing to volunteer their time to take on cases selected for inclusion in the Pilot Program, as well as other specialty pro bono programs that the committee is sponsoring. We have used questionnaires for our volunteers to find out their particular areas of interest and expertise so that we can be in a position to make appropriate matches between cases and volunteer attorneys according to their areas of interest, experience, and availability.

C. Placement of Cases in the Pilot Program

When an appeal is identified by the Pro Bono Committee as a candidate for the Pilot Program, the committee publishes limited information regarding the case, such

as the nature of the case, issues on appeal, the status of appellate proceedings, and any impending deadlines, and solicits volunteers to take the case. Based upon the responses, the Pro Bono will make an appropriate match.

If your case is chosen and counsel is located, the Committee will send you a letter advising you of the match, providing contact information for your pro bono attorney and advising you that you have 14 days to object if you do not want this attorney to represent you. If you do object, you need simply notify the Committee in writing. You need not indicate your reasons for objecting, but there is, of course, no guarantee that the Committee will be able to find replacement counsel.

Assuming you do not object to the volunteer attorney within 14 days of receiving the Committee's letter, that attorney will undertake further

representation of you in the appeal without charging legal fees.

D. Representation in the Appeal

If a volunteer lawyer is matched with your case through the Program, that lawyer will be your lawyer in handling the appeal on your behalf in the Third Court of Appeals from that point forward. He or she will prepare the briefs and any necessary motions and present oral argument to the Court of Appeals if argument is ordered.

The scope of the representation is limited to the appeal in the Third Court of Appeals and terminates once those proceedings are concluded—typically after the opinion of the issues or the Court rules on any timely filed motions for rehearing. If you are unsuccessful in this Court and desire to go forward to the Texas Supreme Court, you will need to make other arrangements for representation in that court unless your appointed counsel agrees in writing to undertake the further representation. Please be advised that we are working with the

Texas Supreme Court on a pilot pro bono program with that court, although the procedures and requirements for that program will necessarily differ from this one.

For questions or comments about the Pro Bono Pilot Program, please contact webmaster@tex-app.org

