

Additional Civil Appeals: Texas

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A Q&A guide to appealing from an intermediate appellate court to the court of last resort in Texas. This Q&A addresses starting an appeal (as of right or by permission), obtaining a stay pending appeal, completing preliminary requirements (like mediation), submitting a factual record or appendix, briefing the appeal and arguing the appeal. Answers to questions can be compared across a number of jurisdictions (see *Additional Civil Appeals: State Q&A Tool* (us.practicallaw.com/6-572-8101)).

OVERVIEW OF STATE APPEALS

1. What types of rulings, if any, can a party appeal as of right?

There are no appeals as of right to the Texas Supreme Court.

2. What types of rulings can a party appeal by permission (for example, anything not appealable as of right, final judgments)?

The Texas Supreme Court has discretion to hear appeals:

- From final judgments of the Texas Courts of Appeals.
- In civil matters.

(*Tex. Gov't Code* § 22.001(a); *Del Valle Indep. Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992).)

In particular, the Texas Supreme Court may hear appeals from final judgments of the Courts of Appeals if:

- The justices of the Courts of Appeals disagree on a question of law material to the Court of Appeals' decision.

- One of the Courts of Appeals holds differently on a question of law material to a prior decision of:
 - another Court of Appeals; or
 - the Texas Supreme Court.
- The construction or validity of a statute is necessary to a determination of the case.
- The case involves state revenues.
- The *Railroad Commission of Texas* is a party to the case.
- It appears that:
 - an error of law has been committed by the Court of Appeals; and
 - the error is of such importance to the jurisprudence of the state that it requires correction, except where the jurisdiction of the Court of Appeals is made final by statute.

(*Tex. Gov't Code* § 22.001(a)(1)-(6); *Tex. R. App. P.* 56.1(a).)

In certain instances the Texas Supreme Court may review a decision of a Court of Appeals in an interlocutory appeal.

In particular, the Supreme Court may review an interlocutory ruling of a Court of Appeals if either:

- The justices of the Courts of Appeals disagree on a question of law material to the decision.
- The Court of Appeals holds differently from a prior decision of:
 - another Court of Appeals; or
 - the Texas Supreme Court.

(*Tex. Gov't Code* § 22.225(c), (e).)

The Texas Supreme Court may also review an interlocutory ruling that:

- Grants or denies class certification (*Tex. Gov't Code* § 22.225(d); *Tex. Civ. Prac. & Rem. Code* § 51.014(a)(3); *Farmers Grp., Inc. v. Lubin*, 222 S.W.3d 417, 420-21 & n. 6 (Tex. 2007)).
- Denies a motion for **summary judgment** relating to media conduct and free speech or free press rights under the US and Texas Constitutions (*Tex. Gov't Code* § 22.225(d); *Tex. Civ. Prac. & Rem. Code* § 51.014(a)(6)).



- Denies a motion to dismiss in an asbestos or silica case based on a plaintiff's failure to timely serve certain statutorily mandated reports (*Tex. Gov't Code* § 22.225(d); *Tex. Civ. Prac. & Rem. Code* §§ 51.014(a)(11), 90.007).
 - Involves a controlling question of law where:
 - there is a substantial ground for difference of opinion; and
 - an immediate appeal may materially advance the ultimate termination of the litigation (see *State Q&A, Initial Civil Appeals: Texas: Question 2* (<http://us.practicallaw.com/6-573-0745>))
- (*Tex. Gov't Code* § 22.225(d); *Tex. Civ. Prac. & Rem. Code* § 51.014(d).)

3. Are there any restrictions on the types of issues the court of last resort can consider (for example, only constitutional questions, only questions of law)?

The Texas Supreme Court may only consider questions of law (*Tex. Gov't Code* § 22.001(a)).

4. Can the court of last resort consider the entire case (subject to any restrictions in Question 3) or is it limited to particular matters (for example, questions on which certiorari was granted)?

Texas Supreme Court generally will consider only those issues and points raised in:

- The briefing on the merits.
- The petition for review.

(*Tex. R. App. P.* 53.2, 53.4 and 55.2 to 55.4.)

STARTING AN APPEAL

5. When must a party start an appeal?

A petition for review generally must be filed with the Texas Supreme Court within 45 days after the later of:

- The date the Court of Appeals renders final judgment, if no motion for rehearing or *en banc* reconsideration is timely filed.
- The date of the Court of Appeals' last ruling on all timely filed motions for rehearing or *en banc* reconsideration.

(*Tex. R. App. P.* 53.7(a).)

If a party timely files a petition for review, another party may file a petition for review within the later of:

- 45 days after the last timely motion for rehearing is denied.
- 30 days after any preceding petition is filed.

(*Tex. R. App. P.* 53.7(c).)

6. How, if at all, can a party extend the time to start an appeal?

A party can extend the time to appeal by filing a motion to extend time within 15 days after the deadline for filing the petition for review with the Texas Supreme Court (*Tex. R. App. P.* 53.7(f)).

The motion must comply with the formatting requirements of *Texas Rule of Appellate Procedure* 10.5(b) (*Tex. R. App. P.* 53.7(f)).

7. How does a party start an appeal as of right (for example, notice of appeal, petition)?

There are no civil appeals to the Texas Supreme Court as of right (see *Question 1*).

8. How does a party start an appeal by permission (for example, motion to the court of last resort, motion to the intermediate appellate court)?

In Texas, a party starts an appeal by permission by filing a petition for review addressed to "The Supreme Court of Texas" (*Tex. R. App. P.* 53.1).

The petition for review must contain:

- The parties and counsel to the trial court's final judgment.
- A table of contents.
- An index of authorities.
- A statement of the case, which should be under one page, should not discuss the facts and must contain:
 - a concise description of the nature of the case;
 - the judge who signed the appealed order or judgment;
 - the trial court's designation and county;
 - the disposition of the case in the trial court;
 - the parties in the Court of Appeals;
 - the district of the Court of Appeals;
 - the justices who participated in the Court of Appeals' decision, the author of the opinion for the court and the author of any separate opinion;
 - the Court of Appeals' opinion citation; and
 - the disposition of the case in the Court of Appeals, including the disposition of any motions for rehearing or *en banc* reconsideration and whether any of these motions are pending in the Court of Appeals.
- A statement of the Supreme Court's jurisdiction.
- The issues presented for review.
- A statement of facts.
- A summary of the argument.
- The argument.
- A prayer for relief.
- An appendix.

(*Tex. R. App. P.* 53.2.)

9. How, if at all, can a party stay the lower courts' rulings pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

A stay of proceedings pending appeal is determined by the Court of Appeals before any petition to the Supreme Court (see *State Q&A, Initial Civil Appeals: Texas: Question 8* (1-574-1765)).

PRELIMINARY MATTERS

10. What, if any, preliminary matters are required before the parties brief the appeal (for example, filing informational forms, participating in mediation or settlement conferences)?

In Texas, a party must file a petition for review before the parties brief the appeal (*Tex. R. App. P. 53.1*; see *Question 8*).

A petitioner's appendix must be filed with the petition for review (*Tex. R. App. P. 53.2(k)*).

Only if the Texas Supreme Court orders briefing may the parties submit merits briefing regarding the issue on appeal (see *Question 12*; *Tex. R. App. P. 55.1*).

COURT SUBMISSIONS

11. What factual materials are submitted to the court (for example, the trial court record, excerpts of the record, an appendix)? When and by whom?

REPRODUCED FULL RECORD

In Texas, a petitioner is not required to reproduce the full record on filing a petition for review.

Rather, the Texas Supreme Court clerk may ask the Court of Appeals to file the record with the Texas Supreme Court (*Tex. R. App. P. 54.1*). The petitioner, however, is responsible for the cost of mailing the record to the Texas Supreme Court (*Tex. R. App. P. 54.3, 54.4*).

On request from the Texas Supreme Court clerk for the record, the Court of Appeals must send the following:

- The original record.
- Any motion filed in the Court of Appeals.
- Copies of all orders of the Court of Appeals.
- Copies of all opinions and the judgment of the Court of Appeals.

(*Tex. R. App. P. 54.2(a)*.)

APPENDIX

In Texas, unless voluminous or impracticable, the appendix must include a copy of:

- The judgment or other appealable order of the trial court from which relief in the Court of Appeals was sought.
- The jury charge and verdict or the trial court's findings of fact and conclusions of law, if any.
- The opinion and judgment of the Court of Appeals.
- The text of:
 - any rule, regulation, ordinance, statute, constitutional provision or other law on which the argument is based (excluding case law); and
 - any contract or other document that is central to the argument.

(*Tex. R. App. P. 53.2(k)(1)*.)

A party may also choose to include other items pertinent to the issues or points presented for review, including copies or excerpts of:

- Relevant court opinions.

- Statutes.
- Constitutional provisions.
- Documents on which the suit was based.
- Pleadings.
- Other similar material.

(*Tex. R. App. P. 53.2(k)(2)*.)

RESPONDENT'S APPENDIX

The appendix to the response does not need to contain any item already contained in the petitioner's appendix, but may contain additional items the respondent considers pertinent to the issues presented for review (*Tex. R. App. P. 53.3(f)*).

TIME FOR FILING

A petitioner's appendix must be filed with the petition for review (*Tex. R. App. P. 53.2(k)*).

A respondent's appendix must be filed with the response to the petition, which is generally due within 30 days after the petition for review is filed (*Tex. R. App. P. 53.3(f), 53.7(d)*).

RESPONSIBILITY FOR FILING

The petitioner is responsible for filing the appendix with the petition for review (*Tex. R. App. P. 53.1, 53.2(k)*).

The respondent may file an appendix with the response to the petition (*Tex. R. App. P. 53.3(f)*).

The Texas Supreme Court clerk is responsible for requesting the record from the Court of Appeals if necessary, but the petitioner is responsible for the costs of sending the record to the Texas Supreme Court (*Tex. R. App. P. 54.1, 54.3*).

12. What briefs are filed and when? Does this change when there is a cross-appeal?

FILING BRIEFS

In Texas, a brief on the merits may not be filed unless requested by the Texas Supreme Court and the court may make that request with or without granting the petition for review (*Tex. R. App. P. 55.1*).

PETITIONER'S BRIEF ON THE MERITS

A petitioner's brief on the merits, if requested, must contain all of the same information as the petition for review (*Tex. R. App. P. 55.2*).

A petitioner may file the same brief that it filed with the Court of Appeals in place of a brief on the merits (*Tex. R. App. P. 55.5*).

The petitioner's brief on the merits must be filed with the Texas Supreme Court clerk:

- According to the schedule stated in the clerk's notice requesting briefs on the merits.
- Within 30 days after the date of the clerk's notice requesting briefs on the merits, if no schedule is provided in the notice.

(*Tex. R. App. P. 55.7*.)

RESPONDENT'S BRIEF ON THE MERITS

A respondent's brief on the merits, if requested, must conform to the same form and content as the petitioner's brief, with several exceptions outlined in *Texas Rule of Appellate Procedure 55.3*.

The respondent may also file the same brief that it filed with the Court of Appeals in place of a brief on the merits (*Tex. R. App. P. 55.5*).

A respondent must file its brief on the merits with the Texas Supreme Court clerk:

- According to the schedule stated in the clerk's notice requesting briefs on the merits.
- Within 20 days after receiving the petitioner's brief, if no schedule is provided in the clerk's notice requesting briefs on the merits.

(*Tex. R. App. P. 55.7*.)

PETITIONER'S REPLY BRIEF

The petitioner may file a reply brief to address any point or issue in the response, but the Texas Supreme Court may decide the case before receiving the reply brief (*Tex. R. App. P. 55.4*).

The petitioner's reply brief must be filed with the Texas Supreme Court clerk:

- According to the schedule stated in the clerk's notice requesting briefs on the merits.
- Within 15 days after receiving the respondent's brief, if no schedule is provided in the clerk's notice requesting briefs on the merits.

(*Tex. R. App. P. 55.7*.)

13. How, if at all, can a party extend the time to file a brief (for example, stipulation, so-ordered stipulation, motion)?

The Texas Supreme Court may extend the time to file a brief on the merits if, either before or after the brief is due, the party files a motion to extend time complying with *Texas Rule of Appellate Procedure 10.5(b)* (*Tex. R. App. P. 55.7*).

14. Are there word or page limits for briefs? If so, please indicate:

- The word or page limit for each type of brief (for example, appellant's brief, appellee's brief, reply brief).
- How, if at all, a party can obtain permission to exceed the usual limit (for example, stipulation, so-ordered stipulation, motion).

WORD OR PAGE LIMITS

In Texas, the parties' opening briefs on the merits must not exceed:

- 15,000 words if computer-generated.
- 50 pages if not computer-generated.

(*Tex. R. App. P. 9.4(i)(2)(B)*.)

A reply brief must not exceed:

- 7,500 words if computer-generated.
- 25 pages if not computer-generated.

(*Tex. R. App. P. 9.4(i)(2)(C)*.)

In calculating the length of a brief, every word and every part of the document, including headings, footnotes and quotations, is counted except the:

- Caption.
- Identity of parties and counsel.
- Statement regarding oral argument.
- Table of contents.
- Index of authorities.
- Statement of the case.
- Statement of issues presented.
- Statement of jurisdiction.
- Statement of procedural history.
- Signature.
- Proof of service.
- Certification.
- Certificate of compliance.
- Appendix.

(*Tex. R. App. P. 9.4(i)(1)*.)

OVERSIZED BRIEFS

A party may make a motion to the Texas Supreme Court for leave to exceed the page limitations (*Tex. R. App. P. 9.4(i)(4)*).

Although there is no specific rule governing the manner in which a party must move for leave to exceed the page limitations, the Texas Rules of Appellate Procedure provide a general procedure for parties to follow when applying for an order or other relief in the appellate courts.

If a party plans to submit a brief exceeding the word or page limits, the party should file a motion with the appellate court for permission to submit a longer brief. *Texas Rule of Appellate Procedure 10.1(a)* sets out the general requirements for making a motion.

ORAL ARGUMENTS

15. Is oral argument available? If so, please indicate:

- Any restrictions on what types of cases may be argued.
- Whether the parties can request oral argument or submission on the papers.
- How much time each party or side typically receives for argument.

TYPES OF CASES THAT MAY BE ARGUED

In Texas, oral argument is available in any type of case for which the Texas Supreme Court grants review.

A petition may be granted and an opinion rendered without oral argument, however, if six members of the Texas Supreme Court vote to do so (*Tex. R. App. P. 59.1(b)*).

PARTY INVOLVEMENT IN DECISION

The parties do not need to request oral argument. If the Texas Supreme Court decides that oral argument would aid the Court, it will set the case for argument, and the clerk will notify the parties (*Tex. R. App. P. 59.2*).

LENGTH OF ORAL ARGUMENTS

The Texas Supreme Court will advise the parties of the time allotted for oral argument, but until the date set for argument, either party may move the court for an extension of time for argument (*Tex. R. App. P. 59.4*).

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