

## FOURTH COURT OF APPEALS

### INTERNAL OPERATING PROCEDURES FOR THE HANDLING OF CASES

1. **Applicability.** These Internal Operating Procedures for the Handling of Cases apply to all civil and criminal proceedings filed in the Fourth Court of Appeals except appeals arising under the Parental Notification Act, which are governed by that Act and sections 2, 4, and 15 of these rules only.
2. **Seniority**
  - a. The chief justice is the senior justice.
  - b. The seniority of a justice is determined by the date the justice joined the court.
  - c. If two or more justices join the court on the same date, their seniority relative to one another will be determined by lot.
3. **“By Lot”**
  - a. Whenever these rules provide that assignment shall be “by lot,” the responsibility for making the assignment by lot is entrusted to the clerk of the court.
  - b. In making an assignment by lot, the clerk of the court may decide the procedure to be employed.
4. **“Justice” and “Participating Justices”**
  - a. When “justice” or “justices” is used in these rules (other than in section 2), it refers both to the court’s chief justice and justices.
  - b. A “participating justice” is a justice (including any visiting justice assigned to the case) who is not recused or disqualified from considering whether to grant en banc consideration or reconsideration or participating in en banc review in a particular case.
5. **Court Records**
  - a. Unless made confidential by law, the court’s opinions, judgments, and orders are public records.
  - b. The assignment sheets maintained by the clerk of the court, drafts of opinions and judgments, route slips, motion cover sheets, memoranda, vote sheets, and individuals’ notes are confidential and must not be placed in the public record.

- c. The original briefs and other papers filed in a case, clerks' records, and reporters' records are public records unless sealed by order of the trial court in accordance with Rule 76a, TEX. R. CIV. P., by another court in accordance with other law, or by other law. If a record is sealed, the clerk of the court must:
  - i. ensure the record remains sealed to all unauthorized persons; and
  - ii. issue a letter warning the litigants and their attorneys that the record is sealed in this court.

## **6. Failure to Pay Filing Fee**

- a. If a document is tendered for filing without the appropriate filing fee, it must be conditionally filed, a letter sent to the filer noting the deficiency and affording the filer ten days in which to correct it, and entered into Case Management with the notation "pending fee."
- b. Absent extraordinary circumstances, a document tendered for filing without the appropriate filing fee will not be further processed unless the filing fee is paid within the period designated in the letter sent pursuant to section 6.a.
- c. If the filer pays the appropriate filing fee within the time period designated in the letter sent pursuant to section 6.a, the notation "pending fee" must be removed from Case Management and the document processed in the usual manner.
- d. If the filer fails to pay the appropriate filing fee within the time period designated in the letter sent pursuant to section 6.a, the document must be forwarded for appropriate action to:
  - i. the monitoring justice if the case has not yet been assigned to a submission panel in accordance with section 7 below; or
  - ii. the authoring justice if the case has been assigned to a submission panel in accordance with section 8 below.

## **7. Monitoring of Appeals; Jurisdiction Checks; Alternative Dispute Resolution**

- a. When an ordinary or accelerated appeal is filed, it must be assigned to a justice in rotation in order of seniority to monitor.
- b. The justice to whom an appeal is assigned for monitoring purposes is the "monitoring justice"; the monitoring justice's staff attorney is the "monitoring attorney"; the "monitoring panel" is the monitoring justice and the next two justices in order of seniority; and the "monitoring period" is the period of time beginning with the date

the appeal is filed and ending on the date that a submission panel is assigned to the appeal in accordance with section 8 below.

c. Jurisdiction Checks

- i. As soon as practicable after the monitoring attorney's receipt of the clerk's record, the monitoring attorney must complete a jurisdiction check.
- ii. When conducting a jurisdiction check, the monitoring attorney must determine whether the record was sealed by the trial court and notify the clerk of the court accordingly, so the letter required by section 5.c.ii may be sent.
- iii. If the monitoring attorney determines that the court does not have jurisdiction over the appeal, so that it must be dismissed, the monitoring attorney must prepare an appropriate opinion, order, or judgment.

(1) In a criminal case, if a notice of appeal is filed more than one year after it was due, the appeal may be dismissed without first issuing a show cause order; if the notice of appeal was filed less than one year after it was due, the appeal may not be dismissed without first issuing a show cause order and affording the appellant an opportunity to respond.

(2) In a civil case, if a notice of appeal is filed no more than fifteen days after the date it was due, the monitoring panel must issue a show cause order and afford the appellant an opportunity to provide a reasonable explanation for the late filing.

d. Certification in Criminal Appeals. If the trial court's certification states and the record reflects that the appellant does not have the right to appeal, the monitoring justice must issue a show cause order and afford the appellant an opportunity to respond before dismissing the appeal. Conversely, if the trial court's certification states that the appellant does not have the right to appeal but the record reflects that the appellant does have the right to appeal, the monitoring justice must issue an order affording the trial court an opportunity to amend its certification.

e. Failure to File Clerk's Record. If a clerk's record is not filed because the appellant failed to pay or make arrangements to pay the clerk's fee for preparing the record, the monitoring attorney must determine whether the record reflects that the appellant is indigent.

i. If the record establishes that the appellant is indigent, the monitoring justice must issue an order stating that appellant is indigent and ordering the clerk to file the clerk's record.

ii. If the record establishes that the appellant is not indigent or fails to establish indigency, the monitoring justice must issue an order affording appellant at

least ten days to show that the clerk's fee has been paid or that appellant is entitled to proceed without payment of costs. If appellant fails to file a satisfactory response within the time ordered, the monitoring panel may dismiss the appeal for want of prosecution.

f. Alternative Dispute Resolution

i. General Provisions

- (1) Local Rule 2 provides that “[o]n a party’s motion, or on the court’s own initiative after reviewing the docketing statement, the Court may refer a case to alternative dispute resolution.”
- (2) ADR is considered an available option in all civil appeals over which the trial court has jurisdiction except those involving juveniles.
- (3) The ADR deputy clerk must place all ADR filings in a blue file folder (the ADR file) and segregate the ADR file from the case file.

ii. When a party to a civil appeal in which ADR is available files its civil docketing statement, it must also file an ADR Addendum.

- (1) If a party fails to file an ADR Addendum with its civil docketing statement, the ADR deputy clerk must provide the party with an ADR Addendum.
- (2) If the party still fails to file its ADR Addendum, the ADR deputy clerk must send the party a reminder notice.

iii. Upon receipt of ADR addenda from all parties to an appeal, the ADR deputy clerk must review the addenda to determine the parties’ positions regarding ADR and communicate the parties’ positions to the ADR justice.

- (1) If all parties to an appeal agree to ADR, the ADR justice must refer the appeal to ADR.
- (2) If all parties to an appeal oppose ADR, the ADR justice must not refer the appeal to ADR.
- (3) If one or more parties agrees to ADR and one or more parties opposes ADR, the ADR justice must decide whether to refer the appeal to ADR on a case-by-case basis in light of the parties’ reasons for agreeing to and opposing ADR.

iv. If an appeal is to be referred to ADR, the ADR justice must issue an order so indicating and giving the parties fifteen days to either object to ADR or propose a mutually agreeable mediator.

- (1) If any party objects to ADR, the ADR justice may not refer the appeal to ADR.
- (2) If no party objects to ADR and the parties agree on a mediator, the ADR justice must issue an order referring the appeal to ADR, appointing the mediator agreed to by the parties, and suspending the appellate deadlines for an appropriate period of time, generally forty-five days.
- (3) If no party objects to ADR and the parties do not agree on a mediator, the ADR justice must select a mediator and issue the order referred to in the preceding section.
- (4) The ADR deputy clerk must mail copies of the referral and suspension order to the parties and the mediator and file them in the ADR file. The ADR deputy clerk must also note the fact and length of the suspension in Case Management and notify the monitoring attorney accordingly.
- (5) If the parties need additional time for ADR beyond the initial suspension period, the ADR justice may issue an order extending the suspension. If the suspension is extended, the ADR deputy clerk must update Case Management accordingly.
- (6) When ADR is concluded, the mediator must report the outcome of ADR to the court. Upon receipt of the mediator's report, the ADR deputy clerk must mail a letter thanking the mediator and forward the mediator's report to the monitoring attorney for appropriate action.

g. Motions

- i. All motions filed during the monitoring period (except motions for extensions of time in which to file briefs, which the clerk is authorized to rule on by the administrative order attached as Appendix 1) must be delivered immediately after filing to the monitoring justice or the monitoring attorney.
- ii. All motions filed during the monitoring period, except the motions specified in section 7.g.iii below, must be either promptly ruled upon by the monitoring justice in accordance with Rule 10.3.a, TEX. R. APP. P., or, if necessary, carried with the case.
- iii. A motion must be submitted to the monitoring panel if:
  - (1) the ruling on the motion will dispose of the appeal;
  - (2) the monitoring justice votes to deny the motion;

- (3) the motion will be disposed of with a written opinion; or
    - (4) the monitoring justice votes to grant a motion to extend the time in which to file a brief in excess of ninety days from the date the brief was originally due.
    - (5) However, if a motion requiring immediate action must be submitted to the monitoring panel and one of the justices on the monitoring panel is unavailable, the motion must be submitted to the next justice in order of seniority until the required number of signatures has been obtained.
    - (6) If the ruling on a motion that must be submitted to the monitoring panel will not dispose of the appeal, it may be ruled upon by only two justices in exceptional circumstances.
  - iv. Motions that may be ruled upon by a single justice pursuant to section 7.g.ii above must be disposed of by a written order. Motions that require a ruling by a panel pursuant to section 7.g.iii above must be disposed of by a written order or an opinion, as a majority of the panel may deem appropriate.
- h. Briefs
  - i. When a party's brief is filed or an amicus brief is received, the fact of its filing or receipt must be entered into Case Management and the brief delivered to the monitoring attorney as soon as practicable after filing.
  - ii. After receiving a brief, the monitoring attorney must review it to ensure that it complies with Rule 38, TEX. R. APP. P.
  - iii. If a brief "flagrantly" violates Rule 38, TEX. R. APP. P., a written order requiring it to be amended, supplemented, redrawn, or stricken in accordance with Rule 38.9(a), TEX. R. APP., may be issued by the monitoring panel
- i. Initial Recommendation Regarding Oral Argument
  - i. An appeal may be submitted without oral argument "if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal." TEX. R. APP. P. 39.8.
  - ii. Ordinary Appeals
    - (1) When the response brief in an ordinary appeal has been filed or the time for filing a response brief has expired, the monitoring attorney must review the briefs to determine whether oral argument has been

properly requested by any party and, if so, whether to recommend that the appeal be submitted with oral argument or on briefs in accordance with the criteria set forth above in section 7.i.i.

- (2) After the review described in the preceding section, the monitoring attorney must forward the briefs and recommendation to the clerk of the court, who must calendar the case for submission in accordance with the monitoring attorney's recommendation at the earliest practicable date in accordance with the procedures set forth in section 9.
- iii. Accelerated Appeals
- (1) When the response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the authoring justice must circulate to the panel (assigned in accordance with section 8 below) in order of seniority the briefs, a memorandum regarding whether the appeal should be submitted with oral argument or on briefs in accordance with the criteria set forth in section 7.i.i above, and a vote sheet (which may be included in the memorandum).
  - (2) Upon receipt of the materials identified in the preceding section, each justice must vote whether to submit the appeal with oral argument or on briefs.
  - (3) After the panel has voted on whether to submit the appeal with oral argument or on briefs, the authoring justice's staff attorney must forward the packet to the clerk of the court, who must calendar the case for submission in accordance with the panel's vote at the earliest practicable date in accordance with the procedures set forth in section 9.
- iv. If a party fails to request oral argument on the cover of its brief but later files a motion requesting oral argument, the motion must be held in abeyance until the appeal has been assigned to a panel. When the case is assigned to a panel, the panel must rule on the motion as soon as practicable and communicate its ruling to the clerk of the court, who must set the case for submission in accordance with the panel's vote at the earliest practicable date.

## **8. Submission Panels**

### **a. Ordinary Appeals**

#### **i. Designation**

- (1) Submission panels are assigned at the beginning of each calendar year using a court-approved time series matrix.

- b. Panels for Oral Argument Outside Bexar County
  - i. A panel for oral argument outside Bexar County must be constituted in the same manner as set forth above in section 8.a.i.(1).
    - (1) Visiting Justice Panels.
      - (i) With the approval of a majority of the court, the chief justice may ask the chief justice of the supreme court to appoint a visiting justice to assist in the handling of the court's docket.
      - (ii) If a visiting justice is assigned, the unassigned justice and another justice selected by lot shall sit on a panel with the visiting justice.
      - (iii) The clerk must attempt to equalize the number of visiting justice panels to which justices are assigned.
    - ii. Periods of Service.
      - (1) Panels for Bexar County serve for two-month periods, which are: September-October, November-December, January-February, March-April, and May- June. In addition, the court may, by majority vote, decide to submit cases in July and August, although any justice may opt out of July and August submission panels. Panels for July and August shall be constituted from those justices who have not opted out as set forth above in section 8.a.i.(1).
      - (2) Panels for oral argument outside Bexar County serve only for the day or days designated for oral argument in that county.
  - c. Original Proceedings and Accelerated Appeals. Upon receipt of a petition in an original proceeding and when a response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the case must be assigned to a panel, with the authoring judge being the next justice in rotation in order of seniority and the remaining panel members selected by the clerk of the court in accordance with the appropriate assignment sheet. The clerk of the court shall be responsible for maintaining the rotation list and the assignment sheets. However, if emergency relief is requested and the judge who should be assigned to author the opinion is not available, the next justice in the rotation list will serve as the authoring justice; in that event, authorship in the next original proceeding or accelerated appeal must be assigned to the justice who was unavailable.
  - d. If a monitoring panel orders submission without briefs of an accelerated appeal of a trial court's order terminating the parent-child relationship pursuant to section



263.405(g) of the Texas Family Code, the monitoring panel shall be the panel on the merits; and the monitoring justice shall be the authoring justice.

- e. If a monitoring panel orders that an ordinary appeal be accelerated, either on motion or on the court's own initiative, the monitoring panel shall be the panel that decides the merits of the appeal; and the authoring justice must be determined by lot.
- f. Presiding Officer. The senior justice on a panel presides over the panel.
- g. Substitution of Panel Members. Except as provided in section 8(g), upon the reasonable request, disqualification, or absence of a panel member, the unassigned justice for the month in which a case is to be submitted shall sit for the absent panel member. If the unassigned justice cannot sit, another justice selected by lot shall sit in place of the absent panel member. If the absent panel member was assigned to author the opinion, the sitting justice will be responsible for writing that opinion unless the panel by majority vote agrees otherwise. All changes in the composition of panels and authorship of opinions must be immediately reported to the clerk of the court and entered into Case Management.
- h. Newly-Appointed or Elected Justice
  - i. On cases set for submission on briefs and those already submitted on briefs, a newly-appointed or elected justice replaces the justice whose place the newly-appointed or elected justice has assumed.
  - ii. On cases set for submission with oral argument, a newly-appointed or elected justice replaces the justice whose place the newly-appointed or elected justice has assumed only if (a) oral argument has not yet been heard or (b) oral argument has been heard but the other two justices assigned to the case cannot agree on a judgment.
- i. The clerk of the court must attempt to equalize the number of ordinary appeal, accelerated appeal, and original proceeding panels to which the justices are assigned.

## **9. Assignment of Cases to Panels**

- a. Ordinary Appeals
  - i. Not later than forty-five days before the date set for submission, the clerk of the court must prepare a draft of the submission docket in the following manner:
    - (1) The clerk must cause to be generated two "at issue" lists for ordinary appeals, one list for criminal cases and one list for civil cases, with each list arranged in ascending chronological order beginning with the oldest "at issue" case, except that precedential appeals must be placed

at the top of each list. “At issue” means an appellee’s brief has been filed or the time for filing the appellee’s brief has expired; and the monitoring attorney has instructed the clerk’s office that the case is “at issue” and to set the case.

(2) The clerk must assign the first case on the criminal “at issue” list to Panel A, the second case on the criminal “at issue” list to Panel B, the third case on the criminal list to Panel A, the fourth case on the criminal list to Panel B, and so forth until all the criminal cases on the “at issue” list are assigned or the docket is full. Then the clerk must assign the first case on the civil “at issue” list to Panel A, the second case on the civil “at issue” list to Panel B, the third case on the civil list to Panel A, and so forth until all the civil cases on the “at issue” list are assigned or the docket is full.

b. Accelerated Appeals and Original Proceedings. Accelerated appeals and original proceedings shall be assigned to panels in accordance with section 8.c above.

## **10. Assignment of Cases to Authoring Justices, Final Decision on Oral Argument, and Notice of Submission**

a. General Provisions

- i. Assignment of authorship to a particular justice must be kept confidential until the court’s opinion is issued.
- ii. The clerk of the court must make an effort to ensure that each justice is assigned to author an equal number of opinions in ordinary appeals, accelerated appeals, and original proceedings.

b. Final Decision on Oral Argument

i. Ordinary Appeals. After preparation of the draft submission docket, but before submission, authorship of opinions shall be assigned to a particular justice randomly by lot.

(1) Within ten days after authorship has been assigned in ordinary appeals on the draft submission docket, each panel must meet to review the briefs and determine whether to accept the monitoring attorney’s recommendation regarding oral argument.

- (a) If the panel agrees with the monitoring attorney’s recommendation, no action is required.
- (b) If the panel disagrees with the monitoring attorney’s recommendation, the presiding justice must inform the deputy

clerk responsible for preparing the docket of all changes to the draft submission docket

- (c) After both panels have reported any changes, the clerk of the court must notify the parties of the date of submission, the members of the panel, and whether the case will be submitted with oral argument or on briefs.

- ii. Accelerated Appeals and Original Proceedings. Authorship of opinions in accelerated appeals and original proceedings shall be assigned in accordance with section 8.c above.

## **11. Pre- and Post-Submission Conferences.**

- a. Each panel shall hold a presubmission conference for cases submitted with oral argument. The presiding justice for the panel is responsible for identifying an appropriate meeting date; however, the presubmission conference must be held no later than the afternoon before the day on which oral argument is to be heard.
- b. If a case is orally argued, it must be discussed at a post-submission conference held as soon as practicable after oral argument.

## **12. Preparation, Circulation, and Issuance of Opinions**

- a. Unless the panel members agree otherwise, the justice assigned to author an opinion must prepare and circulate a draft majority opinion along with a route slip to the second member of the panel in order of seniority.
  - i. In ordinary appeals, the authoring justice should place a draft majority opinion into circulation within three months of the submission date. If the authoring justice fails to do so, the other two panel members may call for a conference and, by a majority vote of the panel, transfer authorship to either of the other two panel members.
  - ii. In accelerated appeals and original proceedings, the authoring justice should place a draft majority opinion into circulation as soon as practicable after the submission date.
- b. Although a publication designation is required in opinions in criminal appeals, opinions in civil appeals must not contain a publication designation.
- c. Within ten days of receipt of a draft majority opinion (“the 10-day review period”), the second member of the panel must note on the route slip attached to the draft opinion the date and his or her vote, i.e., whether he or she joins in the proposed opinion or concurs in or dissents to all or part of the proposed judgment, and forward the draft majority opinion and route slip to the third member of the panel. Likewise,

within ten days of receipt of the draft majority opinion, the third panel member must note the date and his or her vote on the route slip and forward the draft majority opinion back to the authoring justice.

- i. Within the 10-day review period, a panel member may prepare a concurring or dissenting opinion and circulate it with an attached route slip to the authoring justice. After the authoring justice has initialed and dated the route slip attached to the concurring or dissenting opinion, he or she must circulate the proposed majority opinion with the attached route slip and the concurring or dissenting opinion and attached route slip to the third justice on the panel.
  - ii. If the justice to whom the authoring justice routes a draft majority opinion does not vote on the route slip attached to a draft majority opinion and forward it to the third member of the panel within the 10-day review period, the authoring justice may circulate the draft majority opinion to the third justice on the panel.
  - iii. If neither of the panel members concurs in the judgment proposed by the authoring justice or if a panel member desires major revisions to a draft majority opinion, the panel members must promptly notify the authoring justice, who must call a panel conference. At this conference, the panel members must attempt to resolve their differences. If the attempt fails, a vote must be taken. If the authoring justice is in the minority, the remaining panel members must decide which of them will author the majority opinion.
- d. If a dissenting, concurring, or undecided justice holds a proposed majority opinion for more than thirty days from the date that justice receives the opinion for review, the authoring justice may call a conference to discuss issuance of the opinion without the dissenting, concurring, or undecided justice. After the conference and in accordance with sections 12.d and 12.f below, the authoring and joining or concurring justice may issue the opinion with an appropriate notation, such as “Dissent to Follow.”
- e. After the panel members have finalized their opinion(s), the assigned legal secretary must e-mail the panel members’ opinion(s) to the other justices and write the date and time of the e-mail on the route slip attached to the majority opinion. If all justices indicate in writing that they do not object to immediate issuance of the opinion(s), the opinion(s) may issue in accordance with section 12.f below; otherwise, no opinion may issue until the expiration of seventy-two hours after the date and time of the e-mail (excluding Saturdays, Sundays, and holidays). At any time within this 72-hour period, any justice may forward his or her suggestions, concerns, or questions to the panel members. Receipt of a suggestion, concern, or question does not obligate the panel members to modify their opinion(s).
- f. Opinions must be issued and posted on the court’s website on Wednesdays and on such other days as a panel (or the justices participating in en banc consideration or reconsideration) by majority vote may direct. To issue on Wednesday, an opinion

must be returned to the assigned legal secretary by 5:00 p.m. on the last working day of the week preceding the intended issue date.

### **13. Motions for Rehearing**

- a. A motion for rehearing not accompanied by a motion for reconsideration en banc must be considered and decided promptly by the panel assigned to the case. A motion for rehearing accompanied by a motion for reconsideration en banc is governed by section 14.b below.
- b. If a majority of the panel believes a motion for rehearing may be meritorious, it must request a response before granting the motion in compliance with Rule 49.2, TEX. R. APP. P.
- c. When a response is requested to a motion for rehearing and when the motion for rehearing is ruled upon, the assigned attorney must prepare and circulate an appropriate order; and the clerk must mail a copy of the order to the parties in compliance with Rule 12.6, TEX. R. APP. P.

### **14. En Banc Consideration or Reconsideration**

- a. General Provisions

Motion for En Banc Consideration should be given priority over other matters in circulation.

- b. Preliminary Review

#### On Motion

- (1) If a motion for rehearing is accompanied by a separate motion for reconsideration en banc, the motion for rehearing and a motion cover sheet, the motion for reconsideration en banc and an “En Banc Preliminary Review” cover sheet, a copy of the panel’s original opinion (if not included as an appendix to one of the motions), and a copy of the panel’s proposed revised opinion, if any, must be circulated first to the panel’s authoring justice and the original panel members in order of seniority and then to the remainder of the participating justices in order of seniority.
  - (a) Each panel member must indicate on the motion cover sheet whether he or she votes to grant the motion for rehearing.
  - (b) Each participating justice must indicate on the En Banc Preliminary Review cover sheet whether he or she votes to grant, deny, or request a response to the motion for reconsideration en banc.

- (2) If a motion for reconsideration en banc is not accompanied by a motion for rehearing, the motion for reconsideration en banc and an “En Banc Preliminary Review” cover sheet, and a copy of the panel’s opinion (if not included as an appendix to one of the motions) must be circulated first to the panel’s authoring justice and the original panel members in order of seniority and then to the remainder of the participating justices in order of seniority. Each participating justice must indicate on the En Banc Preliminary Review cover sheet whether he or she votes to grant, deny, or request a response to the motion for reconsideration en banc.
- (3) If a participating justice votes to grant a motion for reconsideration en banc, he or she must prepare and circulate a memorandum indicating the basis for his or her vote; the memorandum may simply refer to the issue upon which reconsideration en banc should be granted and the appropriate pages in the motion for reconsideration en banc.
- (4) If a majority of the participating justices vote to request a response to a motion for reconsideration en banc, the motion for reconsideration en banc and response must be re-circulated for another vote after the response is filed.
- (5) After each participating justice has voted to either grant or deny a motion for en banc consideration or reconsideration, the authoring justice of the panel opinion must prepare and circulate an order reflecting the court’s vote; and the clerk of the court must mail a copy of the order to the parties or their attorneys in compliance with Rule 12.6, TEX. R. APP. P.

#### On the Court’s Own Initiative

- (1) Any justice may request en banc consideration or reconsideration in any case at any time within the court’s plenary power by requesting a meeting to discuss whether the court should consider or reconsider the case en banc or by preparing and circulating a memorandum explaining the reason or reasons that en banc consideration is desirable.
- (2) Regardless of the means by which consideration or reconsideration en banc is requested, the justices’ votes must be recorded on an En Banc Preliminary Review cover sheet.
- (3) If on the court’s own initiative a majority of the participating justices grant en banc consideration or reconsideration, the authoring justice of the panel opinion must prepare and circulate an order reflecting the court’s vote; and the clerk of the court must mail a copy of the order to the parties or their attorneys in compliance with Rule 12.6, TEX. R. APP. P. If a majority of the participating justices vote to deny en banc consideration or reconsideration on the court’s own initiative, no order is required.

c. En Banc Opinion

- (1) After all participating justices have voted, the authoring justice of the panel opinion must notify all participating justices of the outcome of the vote. If a motion for reconsideration has been denied, participating justices have 72 hours to notify the authoring justice if they intend to file a written dissent to the denial.
- (2) If a motion for reconsideration en banc is granted, the authoring justice on the panel must call a meeting of all justices within ten days.
- (3) Each participating justice must determine whether he or she approves or disapproves of the panel's majority opinion.
- (4) If a majority of the participating justices disapprove of the panel's majority opinion, they must decide among themselves which of them will author an en banc opinion.
- (5) The justice selected to author the en banc opinion must cause to be prepared and circulated to the participating justices an en banc opinion and route slip.
- (6) Any participating justice may concur in or dissent to an en banc opinion or judgment, with or without an opinion.
- (7) To ensure an adequate time for filing recusal motions, no en banc opinion may issue until twenty-one days after the date of the order granting consideration or reconsideration en banc.

d. Concurring or Dissenting Opinion

Any participating justice may concur in or dissent to the grant or denial of a motion for reconsideration en banc or the grant or denial of a justice's request for consideration or reconsideration en banc on the court's own initiative, with or without an opinion. If a participating justice authors a concurring or dissenting opinion, the order granting or denying consideration or reconsideration en banc and the concurring or dissenting opinion should issue simultaneously. Upon request, a participating justice's concurrence or dissent shall be noted on the order granting consideration or reconsideration en banc.

## 15. Parental Notification Act Appeals

- a. Immediately upon receipt of a notice of appeal, the appeal must be assigned a docket number and re-styled In re Jane Doe #\_, as in In re Jane Doe #10.
- b. After the appeal has been assigned a docket number and re-styled, the clerk of the court must immediately assign a panel to the appeal, with an authoring justice

assigned in rotation in order of seniority and the remaining two members of the panel assigned in accordance with the clerk's "In re Jane Doe Assignment Sheet."

- c. After the panel and authorship have been assigned, the clerk of the court must immediately notify the deputy clerk assigned to the appeal of the identity of the authoring justice and the remaining two panel members.
- d. Upon receipt of the identity of the authoring justice and the remaining two panel members, the deputy clerk assigned to the appeal must immediately deliver the appeal file to the authoring justice's staff attorney, who must, as soon as practicable, perform the review and research dictated by the circumstances; distribute copies of the filed documents and any memoranda to the panel members; and, on the forms adopted by the court, prepare and cause to be issued an opinion and judgment reflecting the panel's vote.
- e. Unless an extension is granted in accordance with section 33.04(b), TEX. FAM. CODE ANN., the court's opinion and judgment must issue "not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application." TEX. FAM. CODE ANN. § 33.04(b).
- f. "A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor." TEX. FAM. CODE ANN. § 33.004(c) (Vernon 2008).
- g. Immediately after the court's opinion and judgment issue, the case file must be placed in an envelope, labeled with the style and appeal number of the case, and placed in the court's safe.

**16. Merger.** These Internal Operating Procedures for the Handling of Cases supplant all previous versions of the court's internal operating procedures and rules relating to the handling of cases. Accordingly, upon adoption of these Internal Operating Procedures for the Handling of Cases, supplanted procedures and rules shall be of no further force or effect.

## **17. Amendment**

- a. To amend these rules, the court must convene en banc.
- b. When convened en banc, a majority of the court's members constitutes a quorum; and the concurrence of a majority of the court sitting en banc is necessary for amendment.




These rules are adopted this 3rd day of March, 2009.


  
Catherine Stone, Chief Justice

  
Karen Angelini, Justice

  
Sandee Bryan Marlon, Justice

  
Phylis Speedlin, Justice

  
Rebecca Simmons, Justice

  
Steven C. Hilbig, Justice

  
Marialyn Barnard, Justice