JUVENILE APPEALS

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TABLE OF CONTENTS

I. INTRODUCTION.

> *Identity crisis*.
> n.
> A psychosocial state or condition of disorientation and role confusion occurring especially in adolescents as a result of conflicting internal and external experiences, pressures and expectations and often producing acute anxiety.
>
> Identity crisis. Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition.* Houghton Mifflin Company, 2004. http://dictionary.reference.com/browse/identitycrisis (accessed August 11, 2008).

> "Half swan, half goose, Alexander is a Swoose."
>
> From the lyrics of *Alexander the Swoose (Half Swan-Half Goose)* by Glenn Burris, Ben Forrest, Frank Furlett & Leonard Keller © 1941. A vintage recording of this song, performed by Kay Kyser and His Orchestra, may be heard and downloaded at http://www.jazz-on-line.com/pageinterrogation/php.

It is important to note at the outset that juvenile appeals, like juvenile trials, are a strange amalgam of civil and criminal law. They are basically civil appeals, reviewing civil cases in which children have been adjudicated delinquent for violating the criminal laws. The civil appellate rules usually apply, but criminal standards of review are often used, and criminal precedents often control the merits of these appeals. In addition, there are sometimes major diversions among the 14 intermediate Courts of Appeals that have not yet been resolved the by the Supreme Court of Texas, which is the ultimate authority in these cases. In short, confusion occasionally rules.

In this paper, all citations to the Texas Family Code and other statutes are to the statutes as current through the 2009 regular session of the Legislature. Citations to the Texas Rules of Civil Procedure are to the rules as current through August 1, 2009. Many of the cases cited in this paper do not have Southwest 3rd citations, and are cited by Court of Appeals docket number and the LEXIS citation. However, every civil decision issued by a Court of Appeals after January 1, 2003, has precedential value, whether it has a Southwest 3rd citation or not. TEX. R. APP. P. 47.7(b)(West 2009).

II. THE RIGHT OF APPEAL IN JUVENILE CASES.

These are Civil Appeals.

Chapter 56 of the Texas Family Code deals generally with appeals of juvenile cases. TEX. FAM. CODE § 56.01(a)(West 2009) provides: "An appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme

Court by writ of error or upon certificate, as in civil cases generally."[1] The appeal is from the juvenile court with original jurisdiction and is to the Court of Appeals authorized to hear appeals from that particular trial court.[2] Appellate jurisdiction is thus derivative of the trial court's jurisdiction. *In the Matter of J.S.*, 35 S.W.3d 287, 291 (Tex. App. – Fort Worth 2001, no pet.). There are 14 Courts of Appeals in Texas.

There Is No Constitutional Right of Appeal.

Neither the Constitution of the United States nor the Constitution of Texas provides for a right of appeal. *In the Matter of J.H.*, 176 S.W.3d 677, 679 (Tex. App. – Dallas 2005, no pet.); *In re Jenevein*, 158 S.W.3d 116, 119 (Tex. Spec. Ct. Rev. 2003). The right of appeal is controlled by statute. If the statute does not grant the right to appeal a particular matter, the right does not exist. *In the Matter of R.J.M.*, 211 S.W.3d 393, 394 (Tex. App. – San Antonio 2006, pet. denied); *In the Matter of J.H.*, 176 S.W.3d at 679. In juvenile cases, the right of appeal is provided by Chapter 56 of the Texas Family Code.

III. WHO IS ENTITLED TO APPEAL?

Appeal by the Child.

TEX. FAM. CODE § 56.01(c)(West 2009) is the primary authority for most juvenile appeals. By the terms of this statute,

> An appeal may be taken:
>
> (1) except as provided by Subsection (n),[3] by or on behalf of a child from an order entered under:
>
> (A) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;
>
> (B) Section 54.04 disposing of the case;
>
> (C) Section 54.05 respecting a modification of a previous juvenile court disposition; or
>
> (D) Chapter 55 by a juvenile court committing a child to a facility for the mentally ill or mentally retarded; or

[1] This statutory language is more than a decade out of date. Since 1997, the proper means of seeking review in the Supreme Court of Texas has been by petition for review rather than by writ of error. *See* TEX. R. APP. P. 53.1 (West 2009).

[2] The Supreme Court of Texas has a Docket Equalization Program, under which appeals may be transferred to a Court of Appeals other than the one in which the appeal has been filed. Your appellate case may therefore end up in a court other than your "home court." *See* TEX. GOV'T CODE § 73.001 (West 2009).

[3] Regarding plea bargained cases.

> (2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the institutional division of the Texas Department of Criminal Justice.

Therefore, a child may appeal an order of adjudication, an order of disposition, an order modifying disposition, an order committing a child to a mental health facility, and an order transferring a person serving a determinate sentence, whether now a child or an adult, to TDCJ-ID. The statute says that an appeal may be taken "by or on behalf" of the child. This language limits who may appeal from a juvenile proceeding. May a parent appeal on behalf of the child? The parent may do so, but only in situations in which the child could have done so. "By the plain wording of the statute, the child has the right to appeal and the right of anyone else to appeal is derivative from the child's right, because such appeal must be on the child's behalf." *In the Matter of A.E.E.*, 89 S.W.3d 250, 254 (Tex. App. – Texarkana 2002, no pet.)(holding that the parent could not appeal a plea bargained case on behalf of the child, because the child could not have appealed).

Who may take an appeal "on behalf of" a child? There appears to be no definitive case in point. However, Family Code Sections 56.01(e) & (f), which discuss court admonishments regarding appellate rights and appointment of appellate counsel, respectively, indicate that an appeal may certainly be taken on behalf of a child by the child's parent, guardian, or guardian *ad litem*. There is no indication that anyone else would have standing to take an appeal on behalf of the child, and there are hardly any cases in which anyone else ever attempted to do so. One of these few cases is *In the Interest of P.C.*, 970 S.W.2d 576 (Tex. App. – Dallas 1998, no pet.), in which the former Department of Mental Health and Mental Retardation sought to appeal a juvenile court's denial of a motion to intervene and set aside an order committing a child to a mental health facility. The Fifth Court of Appeals held that MHMR had no standing to appeal, and dismissed the appeal for want of jurisdiction. *Id.* at 578.

You will occasionally have a situation where the child wants to appeal and the parent or guardian does not want to do so. Since the parents' rights are derivative of those of the child, the attorney should file a notice of appeal in this situation. What about the converse, in which the parent wants to appeal and the child does not? If there is no indication in the record that the child expressed a desire to appeal, but the parent filed a notice of appeal, on the parent's own behalf, the appellate court may rule that the notice of appeal does not properly invoke appellate jurisdiction. *See In the Matter of A.M.M.*, No. 09-03-00046-CV, 2003 Tex. App. LEXIS 3119 at *2-*3 (Tex. App. – Beaumont April 10, 2003, no pet.)(mem. op.). It is at least arguable that *any* notice of appeal filed by the parent, against the wishes of the child, is filed on the parent's own behalf, rather than that of the child.

The right of appeal is granted in situations defined by Section 56.01, and several other statutes that will be discussed below. In all other situations, there is no right of appeal, even when the order sought to be appealed is itself legally sanctioned. Thus, although a juvenile court may transfer a determinate sentence probation from juvenile

probation to adult probation prior to the child's 18th birthday by virtue of TEX. FAM. CODE § 54.051 (West 2009), the order of transfer may not be appealed. *In the Matter of J.H.*, 176 S.W.3d 677, 679 (Tex. App. – Dallas 2005, no pet.). Likewise, an order of a juvenile court denying a child's motion to appoint counsel to assist him in filing a motion for DNA testing under Chapter 64 of the Code of Criminal Procedure is not appealable. *In the Matter of R.J.M.*, 211 S.W.3d 393, 394-95 (Tex. App. – San Antonio 2006, pet. denied). Additionally, a juvenile court order transferring a case to another county for disposition, pursuant to TEX. FAM. CODE § 51.07 (West 2009), may not be appealed. *In the Matter of M.A.O.*, No. 04-07-00658-CV, 2008 Tex. App. LEXIS 9830 at *16-*18 (Tex. App. – San Antonio Dec. 10, 2008, no pet.)(mem op.).

The Child May Waive Appeal.

Pursuant to Section 51.09 of the Family Code, a child may waive any statutory or legal right, "[u]nless a contrary intent clearly appears elsewhere" in the Juvenile Justice Code. In order for the waiver to be effective, it must be made by the child and the child's attorney, the child and the attorney must be informed of and understand the right being waived and the consequences of the waiver, the waiver must be voluntary, and the waiver must be made in writing or in recorded court proceedings. According to TEX. FAM. CODE § 56.01(f)(West 2009), the child is entitled to appointed counsel on appeal under the same standards as at the trial level, "unless the right to appeal is waived in accordance with Section 51.09 of this code."

Generally, appeal is waived simply by procedural default, because the child enters into a plea bargain or fails to file a timely notice of appeal. The "in writing" requirement kicks in when the child has not procedurally defaulted, but has actually filed a notice of appeal. The Fifth Court of Appeals (Dallas) has held that "the juvenile and his attorney may waive the right to appeal *after* a timely and proper notice of appeal has been given." *In the Matter of C.W.*, No. 05-04-00674-CV, 2004 Tex. App. LEXIS 11156 at *7 (Tex. App. – Dallas Dec. 13, 2004, pet. denied)(emphasis in original).

The Plea Bargain Exception.

The existence of an executed plea bargain limits the right of appeal in a juvenile case, as it does in an adult criminal case. A child who enters a plea or agrees to a stipulation of evidence may not appeal a juvenile court's order in an adjudication hearing, a disposition hearing, or a modification hearing, "if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless: (1) the court gives permission to appeal; or (2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence." TEX. FAM. CODE § 56.02(n)(West 2009).

Therefore, if there is a plea bargain that the court followed, a juvenile may not appeal unless the court gives permission to appeal, or unless the appeal is of a pretrial motion. Thus, an appeal is appropriate, based upon the denial of a motion to suppress,

when a plea bargain arose only after the court denied the motion. *In the Matter of D.A.R.*, 73 S.W.3d 505, 508-09 (Tex. App. – El Paso 2002, no pet.)(in a case where the court also gave permission to appeal). Family Code Section 56.01(n) does not extend to post-trial motions that are denied. Thus, without permission to appeal, a respondent has no right to appeal the denial of a motion for new trial in a plea bargain case. *In the Matter of J.R.*, No. 14-06-00985-CV, 2007 Tex. App. LEXIS 3777 at *1-*2 (Tex. App. – Houston [14th Dist.] May 17, 2007, no pet.)(mem. op.).

Compliance with Section 56.01(n) is jurisdictional. Failure to abide by its terms subjects the appeal to dismissal for want of jurisdiction. *In the Matter of R.J.D.*, No. 04-06-00495-CV, 2006 Tex. App. LEXIS 10408 at *2 (Tex. App. – San Antonio Dec. 6, 2006, no pet.)(mem. op.). However, the appellate court may not dismiss the appeal, even where there has been a plea bargain and no pretrial motions, where the trial court's admonitions to the respondent are so ambiguous as to arguably grant permission to appeal. *In the Matter of F.C.M.*, No. 04-07-00827-CV, 2008 Tex. App. LEXIS 4459 at *2 (Tex. App. – San Antonio June 18, 2008, no pet.)(mem. op.).

Appeal of a Transfer to Criminal District Court.

There are two other situations, not covered by Section 56.01, where a child may nonetheless appeal an order of the juvenile court. By far the more common of these occurs where the juvenile court waives its jurisdiction and transfers the child to criminal district court for trial as an adult, pursuant to TEX. FAM. CODE § 54.02 (West 2009). This order may be appealed, but not by authority of Section 56.01.

The authorization for this type of appeal is in the criminal statutes rather than the Family Code, because the waiver of jurisdiction and transfer makes the case a criminal case for all purposes. A criminal defendant may appeal an order of a juvenile court certifying the defendant to stand trial as an adult. This transfer order may be appealed "only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court." The appeal is a criminal appeal, and the Code of Criminal Procedure and the Rules of Appellate Procedure applicable to criminal cases apply. TEX. CODE CRIM. PROC. art. 44.47 (West 2009). *See Bleys v. State*, No. 04-09-00360-CR, 2010 Tex. App. LEXIS 3550 (Tex. App. – San Antonio 2010, no pet.)(designated for publication). A direct appeal of the transfer order is not available, and the issues arising from the transfer order are properly raised in an appeal of the final conviction after transfer. *Carlson v. State*, 151 S.W.3d 643, 644 n. 1 (Tex. App. – Eastland 2004, no pet.); *Small v. State*, 23 S.W.3d 549, 550 (Tex. App. – Houston [1st Dist.] 2000, pet. ref'd). An appellate court does not have jurisdiction to consider a direct appeal from a Section 54.02 transfer, and must dismiss such an appeal for want or jurisdiction. *See Silva v. State*, 263 S.W.3d 269, 270 (Tex. App. – Houston [1st Dist.] 2007, no pet.).

Since appeals of transfers to criminal courts are criminal appeals, the limitations which apply to criminal appeals in general also apply to appeals of transfer hearings. Thus, where a person who has been certified for trial as an adult later enters into a plea

bargain, which is honored by the court, a defendant may appeal only those matters raised by a written motion filed and ruled on before trial, or after getting the trial court's permission to appeal. TEX. R. APP. P. 25.2(a)(2)(West 2009). Otherwise, the appellate court has no jurisdiction. *See Woods v. State*, 68 S.W.3d 667, 669-70 (Tex. Crim. App. 2002)(interpreting an earlier version of Rule 25.2 that prohibited a general notice of appeal following a plea bargain).

An appeal of a faulty transfer proceeding addresses a jurisdictional defect and may be appealed unless waived. "A claim that a defect a juvenile transfer proceedings requires reversal or a criminal conviction is a claim that the court lacked jurisdiction to proceed with the adult prosecution." *Faisst v. State*, 98 S.W.3cd 226, 226 (Tex. Crim. App. 2003).

Appeal of an Order Requiring Sex Offender Registration.

TEX. CODE CRIM. PROC. art. 62.357(b)(West 2009) supplements Family Code Section 56.01, and permits a juvenile respondent to appeal a juvenile court order under Code of Criminal Procedure Article 62.352(a) that requires the respondent to register as a sex offender. Such an appeal is "in the same manner as any other legal issue in the case."

Appeal by a Parent of an Order of the Juvenile Court.

Chapter 61 of the Family Code covers the "Rights and Responsibilities of Parents & Other Eligible Persons" in the context of a juvenile case. Chapter 61 generally applies to payments of probation fees, restitution, graffiti eradication fees, court costs, and attorney fees, as well as orders requiring community service and family counseling. The Chapter specifically does not apply to the entry and enforcement of child support orders pursuant to Section 54.06. TEX. FAM. CODE § 61.002 (West 2009). The parent or other eligible person – generally the guardian or custodian of the child – against whom a final juvenile court order has been entered under Chapter 61 "may appeal as provided by law from judgments entered in civil cases." TEX. FAM. CODE § 61.004(a)(West 2009).

Appeal by the State.

The State has a very limited right of appeal in juvenile cases. Section 56.03 of the Family Code permits the prosecuting attorney to appeal certain juvenile court orders in determinate sentencing cases ("cases of violent or habitual offender"). TEX. FAM. CODE § 56.03(b)(West 2009) provides:

> The state is entitled to appeal an order of a court in a juvenile case in which the grand jury has approved the petition under Section 53.045 if the order:
>
> (1) dismisses a petition or any portion of a petition;
> (2) arrests or modifies a judgment;
> (3) grants a new trial;
> (4) sustains a claim of former jeopardy; or

(5) grants a motion to suppress evidence, a confession, or an admission and if:
    (A) jeopardy has not attached to the case;
    (B) the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay; and
    (C) the evidence, confession, or admission is of substantial importance to the case.

Therefore, the State's appellate rights are confined to determinate sentencing cases, and even then under very limited circumstances. Article 44.01 of the Texas Code of Criminal Procedure grants the State a somewhat broader spectrum of appeals in criminal cases, but that statute is not applicable to juvenile cases. *In the Matter of F.C.*, 108 S.W.3d 384, 385 (Tex. App. – Tyler 2003, no pet.); *In the Matter of S.N.*, 95 S.W.3d 535, 536 (Tex. App. – Houston [1st Dist.] 2002, pet. denied). Other than in habitual or violent offender cases, "the right to appeal in a juvenile case rests solely with the child, leaving the State without any statutory or common-law authority to appeal from an adverse ruing in such a case." *In the Matter of F.G.*, No. 13-06-00216-CV, 2007 Tex. App. LEXIS 4887 at *2 (Tex. App. – Corpus Christi June 21, 2007, no pet.)(mem. op.)

Apart from the rights granted by Section 56.03, the State may also appeal from an order of the juvenile court denying the State's motion for entry of orders against a parent or other eligible person, regarding the payments of fees and costs, and the participation in family counseling. TEX. FAM. CODE § 61.004(b)(West 2009). The State also has the statutory right to appeal an order of a juvenile court which exempts a child from sex offender registration. TEX. CODE CRIM. PROC. art. 62.357(a)(West 2009).

IV. RIGHTS AND PROCEDURES INCIDENT TO THE RIGHT OF APPEAL.

Introduction.

If an appeal is proper, as discussed above, the child has several incidental statutory rights. The Family Code also sets forth procedures that must be followed by trial counsel and the trial court.

The Right to Counsel.

A juvenile court respondent has the right to appeal, as provided by Section 56.01(c) of the Family Code. Concomitant with this right, the child also has the right to representation by counsel and the right to the appointment of counsel for appeal if the child is unable to obtain counsel due to indigence. TEX. FAM. CODE § 56.01(d)(West 2009).

The determination of indigence on appeal is determined under the same standards as the determination of indigence at trial. TEX. FAM. CODE § 56.01(f)(West 2009). If the

child, the child's parents, or other persons responsible for the support of the child, are not indigent, the court may order them to pay the appellate costs, including the costs of appellate counsel. TEX. FAM. CODE § 56.01(l)(West 2009). For purposes of determining indigence, "the court shall consider the assets and income of the child, the child's parent, and any other person responsible for the support of the child." TEX. FAM. CODE § 56.01(m)(West 2009).

The determination of indigence may be based on a judicial finding following a hearing or an affidavit of indigence filed by the child's parent or other responsible person. TEX. FAM. CODE § 56.02(b)(West 2009). This creates an additional option to supplement the general rule in civil appeals that indigence is established solely by an affidavit. *See* TEX. R. APP. P. 20.1(a)(1)(West 2009). This is because the general civil rules do not apply when they conflict with applicable provisions of the Family Code. *In the Matter of K.C.A.*, 36 S.W.3d 501, 503 (Tex. 2000). In addition, the provision of Rule 20.1(e) allowing the clerk of the court and the court reporter to contest the affidavit of indigence is not applicable to juvenile proceedings. *Id.* at 502-03.

If previously-appointed appellate counsel becomes unable to continue the representation, the child is entitled to new counsel. If necessary, an appellate court will abate an appeal in order for the trial court to appoint new counsel. *In the Matter of M.W.*, No. 10-06-00212-CV, 2007 Tex. App. LEXIS 541 at *1 (Tex. App. – Waco Jan. 24, 2007, no pet.). Where a *retained* appellate attorney files an *Anders* brief and motion to withdraw, even when the motion appears to the court to be meritorious, the appeal should be abated and remanded to the trial court for a determination of indigence, and appellate counsel should be appointed if there is a finding of indigence. *In the Matter of A.G.*, 195 S.W.3d 886, 887 (Tex. App. – Waco 2006, no pet.).[4] This does not apply where *appointed* counsel files a meritorious motion to withdraw supported by an *Anders* brief. *See In the Matter of D.L.*, No. 02-03-00008-CV, 2004 Tex. App. LEXIS 3213 (Tex. App. – Forth Worth April 8, 2004, no pet.)(mem. op.)(analyzing case under *Anders*, permitting appointed counsel to withdraw, and affirming the trial court). *Anders* briefs will be discussed in more detail later in this paper.

Admonishment by the Trial Court.

"On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian *ad litem* of the child's rights [to appeal, to be represented by counsel, and to have appointed counsel if indigent]." TEX. FAM. CODE § 56.01(e)(West 2009). The use of the word "shall" indicates that the trial court is required to admonish the child and the responsible adult of the right of appeal. Failure to do so is error. The error is harmless when the child timely files a notice of

[4] On remand in *A.G.*, the trial court found that the child and her family were indigent, and appointed the Chief Appellate Public Defender of Bexar County to represent the child. The case was assigned to the author of this paper, who filed a brief on the merits. On subsequent appeal, the Waco Court of Appeals affirmed the case on the merits. *In the Matter of A.G.*, No. 10-06-00107-CV, 2007 Tex. App. LEXIS 5310 (Tex. App. – Waco July 5, 2007, no pet.)(mem. op.). The case was Bexar County case that was transferred to the Tenth Court of Appeals for purposes of docket equalization.

appeal anyway. *C.W. v. State*, 738 S.W.2d 72, 73-74 (Tex. App. – Dallas 1987, no writ). Such an error might not be harmless, however, if the child failed to receive this admonishment and failed to timely perfect and appeal. *Id.* When the admonishment is made but the judgment does not correctly reflect that fact, the appellate court may modify and correct the trail court's judgment. *In the Matter of J.O.*, 247 S.W.3d 422, 425 (Tex. App. – Dallas 2008, no pet.).

Duties of Trail Counsel.

If the child or the adult responsible for the child expresses a desire to appeal, the trial counsel for the child "shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal." If trial counsel will not handle the appeal, the trial court will appoint appellate counsel, TEX. FAM. CODE § 56.01(f)(West 2009), or order the responsible adult to employ counsel. TEX. FAM. CODE § 56.01(l)(West 2009).

Failure to file timely notice of appeal is ineffective assistance of counsel. The proper remedy is a writ of *habeas corpus*. However, since juvenile cases are civil in nature, the writ should not be filed under Article 11.07 of the Code of Criminal Procedure. *Ex parte Valle*, 104 S.W.3d 888, 889 (Tex. Crim. App. 2003); *see also In re Debrow*, No. 04-04-00424-CV, 2004 Tex. App. LEXIS 7146 (Tex. App. – San Antonio Aug. 11, 2004, orig. proceeding)(mem. op.).[5]

Effect of Appeal.

An appeal does not suspend the order of the juvenile court or release the child from the custody of the trial court or of person, institution, or agency to whom the child is committed, unless the trial court orders otherwise. The appellate court may provide for a personal bond. TEX. FAM. CODE § 56.01(g)(West 2009). In an adult probation case, the probation is suspended while an appeal is pending. In a juvenile probation case, the probation is not suspended.

Although the statute speaks of only the appellate court with regard to granting a personal bond, it "vests in both the juvenile court and the appellate court to allow a juvenile to be released on bond pending an appeal." The appellate court's jurisdiction in that regard is independent of the trial court's authority. The juvenile has the burden to

[5] For a synopsis of the tortured history of this case prior to the granting of the writ by the trial court, *see In re Debrow*, No. 04-05-00082-CV, 2005 Tex. App. LEXIS 1769 (Tex. App. – San Antonio Mar. 9, 2005, orig. proceeding)(mem. op). The successful writ resulted in an out of time appeal, and a reversal and remand of the disposition phase. *In the Matter of E.C.D., Jr.*, No. 04-05-00391-CV, 2007 Tex. App. LEXIS 1270 (Tex. App. – San Antonio Feb. 21, 2007, no pet.)(mem. op.). Alas, the "child," who was 27 years old at his retrial, received a 40-year determinate sentence (for murder) in lieu of the 27-year determinate sentence he received 15 years earlier. That order was affirmed on appeal. *In the Matter of E.C.D., Jr., II*, No. 04-07-00835-CV, 2008 Tex. App. LEXIS 7786 (Tex. App. – San Antonio Oct. 15, 2008, no pet.)(mem. op.). Juvenile *habeas corpus* proceedings are beyond the scope of this paper. For guidance on these, the reader is referred to an excellent article by Stephanie Stevens which may be found at 5-115 TEXAS CRIMINAL PRACTICE GUIDE § 115.04 (Matthew Bender & Co. 2010).

show that he or she should be released on bond. *In the Matter of J.V.*, 944 S.W.2d 15, 17 (Tex. App. – El Paso 1997, orig. proceeding).

Appellate Priority.

"If the order appealed from takes custody of the child from his parent, guardian, or custodian, the appeal has precedence over all other cases." TEX. FAM. CODE § 56.01(h)(West 2009).

Possible Resolutions by the Appellate Court.

The appellate court may affirm, reverse, or modify an order of adjudication, and an order of disposition, or an order modifying disposition. It may reverse or modify and order of disposition or an order modifying disposition, while affirming the underlying order of adjudication. It may also remand for further proceedings any order that it reverses or modifies. TEX. FAM. CODE § 56.01(i)(West 2009).

The appellate court may not identify the child or his family by name in any opinion rendered in an appeal or *habeas corpus* proceeding related to any juvenile court proceeding. The appellate case is styled "In the Matter of _____," identifying the child only by his or her initials. TEX. FAM. CODE § 56.01(j)(West 2009). New Texas Rule of Appellate Procedure 9.8(a)(2), effective September 1, 2008, requires the use of initials or a fictitious name in any papers submitted to the appellate courts and in all opinions by the appellate courts. New Rule 9.8(b)(2) requires the same thing regarding parents or family members.[6]

V. POST-TRIAL MOTIONS IN THE TRIAL COURT.

The most common post-trial motions in civil cases are requests for findings of fact and conclusions of law, and motions for new trial. Although not prohibited in juvenile cases, findings and conclusions are not required and are not even appropriate. On the other hand, motions for new trial are often filed, even though changes in the law effective September 1, 2009, makes them a lot less necessary than they used to be.

Findings of Fact and Conclusions of Law.

In any case tried without a jury, a party may request that the trial court state in writing its findings of fact and conclusions of law. The request must be filed with the clerk of the trial court within 20 days after the judgment is signed, and the clerk "shall immediately call such request to the attention of the judge who tried the case." TEX. R. CIV. P. 296 (West 2009). The trial court has 20 days after a timely request to file its

[6] The rule requiring parents to be identified only by initials will eliminate such absurdities as: "After a non-jury trial, the trial court terminated Appellant George Anthony Guilbeau, II's, parental rights to G.A.G., III." *In the Interest of G.A.G., III*, No. 04-07-00243-CV, 2007 Tex. App. LEXIS 8960 at *2 (Tex. App. – San Antonio Nov. 14, 2007, no pet.)(mem. op.).

findings and conclusions. If the court fails to do so, the party who requested the findings and conclusions must file, within 30 days after the filing of the original request, a notice of past due findings of fact and conclusions of law. The notice shall state the date of the original request and the date when findings and conclusions were due. TEX. R. CIV. P. 297 (West 2009).

In most civil nonjury cases, if findings and conclusions are not filed, "the reviewing court must imply all necessary fact findings in support of the trial court's judgment." *Black v. Dallas County Child Welfare Unit*, 835 S.W.2d 626, 630 n. 10 (Tex. 1992). Findings of fact in a nonjury case are of the same force and effect as a jury's findings on special issues, and are reviewable for factual sufficiency of the evidence to the same extent. *In the Matter of T.D.*, 817 S.W.2d 771, 777 (Tex. App. – Houston [1st Dist.] 1991, writ denied).

The failure to file findings and conclusions is not significant in juvenile cases. The test for determining harm resulting from the failure to file findings and conclusions is whether the circumstances require an appellant to guess the reason the judge ruled against him or her. *In the Matter of O.L.*, 834 S.W.2d 415, 418 (Tex. App. – Corpus Christi 1992, no writ). With regard to adjudication, the trial court is required to state in its order precisely which allegations in the petition it finds to be established by the evidence. TEX. FAM. CODE § 54.03(h)(West 2009). Therefore, an appellant is able to present an appeal challenging the judgment on all violations stated therein and does not have to guess why he or she was adjudicated. Had proper findings and conclusions been filed, an appellant's burden on appeal would have been the same as it is without them. Therefore, failure to file properly requested findings and conclusions is harmless. *Id.*

Likewise, a trial court is not required to file findings and conclusions with regard to dispositions. Section 54.04(f) of the Family Code requires the court to "state specifically in the order the reasons for the disposition and shall furnish a copy of the order to the child." This assures that the child will be in a position to challenge those reasons on appeal. Therefore, there is no reason for a court to file findings and conclusions separate from its order, and such findings and conclusions are neither appropriate nor required. *In the Matter of J.R.*, 907 S.W.2d 107, 110 (Tex. App. – Austin 1995, no writ). Nor are separate findings and conclusions required following a hearing where the juvenile court waives jurisdiction and transfers the case to criminal court, because the court is required by Section 54.02(h) of the Family Code to state the specific reasons in its order. *In the Matter of C.R.*, No. 01-94-00183-CV, 1995 Tex. App. LEXIS 260 at *12-*13 (Tex. App. – Houston [1st Dist.] Feb. 16, 1995, writ denied)(not designated for publication).

If findings and conclusions *are* filed, and if they conflict with to recitations in the judgment, the findings and conclusions control. *In the Matter of B.P.H.*, 83 S.W.3d 400, 410 (Tex. App. – Fort Worth 2002, no pet.).

Motions for New Trial.

As was stated earlier, the requirements governing a juvenile appeal are as in civil cases generally. TEX. FAM. CODE § 56.01(b)(West 2009). Prior to September 1, 2009, Texas Rule of Civil Procedure 324 governed motions for new trial in juvenile cases. After that date, however, Texas Rule of Appellate Procedure 21 governs. The practical effect of this is that motions for new trial are no longer required in order to preserve factual sufficiency error following a juvenile jury trial.

TEX. R. CIV. P. 324 (West 2009), which used to control, provides, in pertinent point, as follows:

> (a) **Motion for New Trial Not Required.** A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b).
> (b) **Motion for New Trial Required.** A point in a motion for new trial is a prerequisite to the following complaints on appeal:
> (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set side a judgment by default;
> (2) A complaint of factual insufficiency of the evidence to support a jury finding;
> (3) A complaint that a jury finding is against the overwhelming weight of the evidence;
> (4) A complaint of inadequacy or excessiveness of damages found by a jury; or
> (5) Incurable argument if not otherwise ruled on by the court.

The most important of these issues, as applied in a juvenile context, was is a factual sufficiency complaint. The Supreme Court of Texas held in 1993 that a motion for new trial was required to preserve error for factual sufficiency review in a juvenile case, due to the civil nature of these cases. *In the Matter of M.R.*, 858 S.W.2d 365, 366 (Tex. 1993). This holding was never overruled by the Supreme Court. However, the El Paso Court of Appeals concluded in 2001 that a motion for new trial was *not* required to preserve factual sufficiency following a jury trial in a juvenile case, because "juvenile law is much more criminal than civil in nature," and the criminal cases do not require a motion for new trial to preserve factual sufficiency to support a jury finding. *In the Matter of J.L.H.*, 58 S.W.3d 242, 246 (Tex. App. – El Paso 2001, no pet.).

El Paso stood alone on this issue. In every other Court of Appeals where the issue came up, the rule requiring a motion for new trial remained in effect. *See, e.g., In the Matter of A.E.B.*, 255 S.W.3d 338, 345 (Tex. App. – Dallas 2008, pet. dism'd); *In the Matter of E.U.M.*, 108 S.W.3d 368, 372 (Tex. App. – Beaumont 2003, no pet.); *In the Matter of D.T.C.*, 30 S.W.3d 43, 51 (Tex. App. – Houston [14th Dist.] 2000, no pet.). However, the reasoning of the Eight Court in *J.L.H.* has prevailed, and the Texas Legislature has effectively overruled *M.R.*

On September 1, 2009, TEX. FAM. CODE § 56.01(b-1)(West 2009) went into effect. This statute provides:

> A motion for new trial seeking to vacate an adjudication is:
>
> (1) timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed; and
>
> (2) governed by Rule 21, Texas Rules of Appellate Procedure.

The new statute thus applies Texas Rule of Appellate Procedure 21 to juvenile cases. This rule is the general criminal law rule on motions for new trial. Significantly, TEX. R. APP. P. 21.2 (West 2009) provides that a "motion for new trial is a prerequisite for presenting a point of error on appeal only when necessary to adduce facts not in the record." Therefore, except in that very narrow situation, a motion for new trial will no longer be necessary, and will not be necessary to preserve factual sufficiency error in juvenile cases. As in criminal cases, factual sufficiency may now be raised for the first time on appeal. *See Grayson v. State*, 82 S.W.3d 357, 368-59 (Tex. App. – Austin 2001, no pet.).

Since Texas Rule of Appellate Procedure 21 applies in juvenile cases, the requirement that a motion for new trial be "presented" to the trial judge also applies. The presentment must occur within 10 days of the date the motion is filed, unless the trial court in its discretion permits it to be presented and heard within 75 days. TEX. R. APP. P. 21.6 (West 2009). The record must affirmatively show that the movant actually delivered the motion to the trial court or otherwise brought the motion to the attention or actual notice of the trial court. *Carranza v. State*, 960 S.W.2d 76, 79 (Tex. Crim. App. 1998). Merely filing the motion is not sufficient. The better practice is to include a certificate of presentment on the motion, and have the judge or court coordinator sign it.

The Supreme Court of Texas addressed the 2009 changes in the law in *In the Matter of R.D.*, 304 S.W.3d 368, 370 n. 2 (Tex. 2010). The Court noted that "the Legislature has eliminated the requirement of a motion for new trial in juvenile delinquency cases. TEX. FAM. CODE § 56.01(b-1). We make no comment about the continuing validity of *In re M.R.* in light of subsequent developments in the law." *Id.* Because of the ambiguous language of the last sentence, this paper continues to include a discussion of pre-2009 law.

Even before the 2009 amendments, a motion for new trial was not a prerequisite to an appellate complaint regarding sufficiency of the evidence in a *nonjury* trial. *In the Matter of E.G.*, 212 S.W.3d 536, 538 n. 1 (Tex. App. – Austin 2006, no pet.); TEX. R. APP. P. 33.1(d)(West 2009). Likewise, it was not a prerequisite to preserving an appellate complaint regarding *legal* sufficiency of the evidence in either a jury or non-jury trial. *See* TEX. R. CIV. P. 324(a)(West 2009). Now, it is not a prerequisite in any juvenile case "except when necessary to adduce facts not in the record."

VI. THE NOTICE OF APPEAL.

The trial attorney files the notice of appeal in juvenile cases where the child or parent expresses a desire to appeal. TEX. FAM. CODE § 56.01(f)(West 2009). The filing of the notice perfects the appeal. The notice must be in writing and filed with the clerk of the trial court. If it is filed with the clerk of the appellate court by mistake, it will be deemed to have been filed with the trial court on the same day, and the clerk of the appellate court must immediately send a copy of the notice to the trial clerk. TEX. R. APP. P. 25.1(a)(West 2009).

The filing of the notice of appeal invokes the jurisdiction of the appellate court. TEX. R. APP. P. 25.1(b)(West 2009). The notice shall be filed by the party who seeks to alter the trial court's judgment or other appealable order. TEX. R. APP. P. 25.1(c)(West 2009). Except in the very limited circumstances discussed above, the child is the only party who may appeal.

The notice of appeal in a juvenile case, being civil, requires more information than the simpler criminal notice of appeal. Pursuant to Texas Rule of Appellate Procedure 25.1(d), the notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;[7]
(2) state the date of the judgment or order appealed;[8]
(3) state that the party desires to appeal;
(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is either of those courts;
(5) state the name of each party filing the notice;
(6) in an accelerated appeal, state that the appeal is accelerated; and
(7) state certain things in a restricted appeal which are irrelevant to juvenile cases, because they are not restricted.

Compliance with these requirements is mandatory, but failure to comply with them does not affect the jurisdiction. There appear to be no juvenile cases where the failure to comply with the required contents was an issue. In a general civil appeal, the Seventh Court of Appeals has merely ordered a non-compliant appellant to file an amended notice. *Peace v. Azrock Indus.*, No. 07-98-00018-CV, 1998 Tex. App. LEXIS 2617 at *2-*3 (Tex. App. – Amarillo April 30, 1998, no pet.)(not designated for publication). If an intransigent appellant fails to comply with such an order, however, the appellate court may dismiss the appeal for want of prosecution and failure to comply with a notice from the court. *Williams v. DaimlerChrysler Fin. Servs. Ams. LLC*, No. 13-07-00482-CV, 2008 Tex. App. LEXIS 359 (Tex. App. – Corpus Christi Jan. 17, 2008, no pet.)(mem. op.).

[7] This may be accomplished in the caption of the notice.
[8] Be sure not to confuse this with the date of disposition ("sentencing").

The notice of appeal must be served on all parties to the judgment or order appealed from. TEX. R. APP. P. 25.1(e)(West 2009). In juvenile cases, this means the State. A copy of the notice must also be filed with the clerk of the appellate court. *Id.* If the notice does not contain a certificate of service, an amended notice may be ordered filed, and if the appellant does not comply, the appeal may be ordered dismissed. *Biddie v. Poole*, No. 12-06-00056-CV, 2006 Tex. App. LEXIS 2691 at *2 (Tex. App. – Tyler April 5, 2006, no pet.)(mem. op.).

A notice of appeal may be amended to correct an omission or defect of a previously-filed notice. The amended notice should be filed with the clerk of the appellate court. It may be filed at any time before the appellant's brief is filed, but only with leave of the court after that. An amended notice is subject to being struck for cause by any party affected by it. TEX. R. APP. P. 25.1(f)(West 2009).

Time for Perfecting the Appeal.

The time limit for perfecting a juvenile appeal is controlled by Texas Rule of Appellate Procedure 26.1, as modified slightly by Texas Family Code § 56.01(b). Unlike criminal appeals, where the timeline begins on the day of sentencing, the timeline in juvenile appeals begins on the day the disposition order is signed by the trial court.

The general civil appellate timeline is defined by TEX. R. APP. P. 26.1 (West 2009). This provides as follows:

> **Civil Cases.** The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:
>
> (a) the notice of appeal must be filed within 90 days after the judgment is signed if any party timely files:
>
> (1) a motion for new trial;
>
> (2) a motion to modify the judgment;
>
> (3) a motion to reinstate under Texas Rule of Civil Procedure 165a; or
>
> (4) a request for findings of fact and conclusions of law if findings and conclusions either are required by the Rules of Civil Procedure or, if not required, could properly be considered by the appellate court.

TEX. FAM. CODE § 56.01(b)(West 2009) provides:

> The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in

> a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed. A motion for new trial seeking to vacate an adjudication is timely if the motion is filed not later than the 30th day after the date on which the disposition is signed.

Section 56.01(b) modifies Rule 26.1 slightly, because the Rule begins the appellate timetable on the day "the judgment" is signed, and there are usually two "judgments" in juvenile cases, the orders of adjudication and disposition (or, in a modification case, the order modifying disposition). Since the disposition hearing is "separate, distinct, and subsequent to the adjudication hearing," TEX. FAM. CODE § 54.04(a)(West 2009), and since disposition is sometimes delayed, the orders of adjudication and disposition may sometimes by signed on different days, and are often signed days – sometimes weeks – after the court hearings.

Section 56.01(b) takes this factor into consideration, and provides that a notice of appeal is timely if filed within the 30-day (or 90-day) limit after the order of *disposition* is signed, without regard to the date the order of *adjudication* is signed. The current language of the Section dates back to a 1997 amendment. "The change is meant to protect all the juvenile's appellate issues when the time between adjudication of guilt and disposition or sentencing exceeds thirty days. The juvenile need no longer struggle with the decision to appeal the guilt/innocence phase of the proceeding before learning what the punishment is." *In the Matter of J.C.H. Jr.*, 12 S.W.3d 561, 562 (Tex. App. – San Antonio 1999, no pet.).

Alas, the language of Section 56.01(b) is also ambiguous, and it is possible to read the "notwithstanding" language statute and conclude that there is *no* time limit to filing a juvenile appeal. If you reach this conclusion, you do so at your client's risk. This result is not what the Legislature intended. Rather, the statute merely begins the appellate timetable with the signing of the order of disposition rather than the order of adjudication. When the notice of appeal is filed outside the proper deadline as so defined, the appellate court must dismiss the appeal for want of jurisdiction. *Id.* at 562. *See In the Matter of R.G.*, No. 08-05-00261-CV, 2005 Tex. App. LEXIS 7175 at *2 (Tex. App. – El Paso Aug. 31, 2005, no pet.)(mem. op.); *In the Matter of G.C.F.*, 42 S.W.3d 194, 196 (Tex. App. – Fort Worth 2001, no pet.).

Premature Filings.

A lot of trial attorneys in juvenile cases forget that the date that triggers the appellate timetable is the date the disposition order is signed rather than the date of

disposition (”sentencing”). In addition, judges sometimes do not sign the orders of disposition right away. This occasionally results in a prematurely filed notice of appeal. There is no danger in this, however, because “In a civil case, a prematurely filed notice of appeal is effective and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal.” TEX. R. APP. P. 27.1(a)(West 2009).

Extensions.

Texas Rule of Appellate Procedure 26.3 deals with extensions to file notice of appeal. According to the Rule:

> The appellate court may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party:
>
> (a) files in the trial court the notice of appeal; and
>
> (b) files in the appellate court a motion complying with Rule 10.5(b).

TEX. R. APP. P. 10.5(b)(West 2009) requires that a motion to extend time to file a notice of appeal contain the following: the deadline for filing the notice, the length of extension sought, the facts relied on to reasonably explain the need for an extension, the number of previous extensions granted, the identity of the trial court, the date of the judgment or appealable order, and the cause number and style of the case in the trial court.

The 15-day extension deadline is jurisdictional. Even if a juvenile appellant can offer a reasonable explanation for his or her failure to file a timely notice of appeal, a motion for an extension filed after the 15-day grace period must be dismissed for want of jurisdiction. *In the Matter of R.H.*, No. 12-06-00420-CV, 2007 Tex. App. LEXIS 672 (Tex. App. – Tyler Jan. 31, 2007, no pet.)(mem. op).

VII. DOCKETING STATEMENT AND PREPARATION OF THE RECORD.

The Docketing Statement.

Texas Rule of Appellate Procedure 32.1 states that “[u]pon perfecting the appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes” 13 categories of information that are listed in the Rule. The Rule sets no deadline for filing the docketing statement. If one is not filed, the appellate court will send the attorney a reminder letter. The Fourth Court’s reminder letter contains a due date.

The appellate attorney does not have to create the form for the docketing statement. Each of the fourteen Courts of Appeals has a docketing statement form available for downloading from the respective websites. These websites are easy to access. The web addresses are sequential, based on the number of the Court of Appeals.

Thus, you should access www.1stcoa.courts.state.tx.us through www.14thcoa.courts.state.tx.us, depending on which court you desire. All of these sites, except for the Fifth Court of Appeals, look very much alike, as all of them except the Fifth Court's site are administered by Texas Courts Online. The websites for the Supreme Court and the Court of Criminal Appeals are also similar in appearance and content. In addition, blank docketing statement forms are available in the clerk's offices for the various Courts of Appeals.

The Appellate Record.

The appellate record consists of the clerk's record and the reporter's record (when the reporter's record is necessary to the appeal, which it almost always is). TEX. R. APP. P. 34.1 (West 2009). "The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record." TEX. R. APP. P. 35.3(c)(West 2009). The appellate court may enforce by contempt its orders to file the appellate record timely. *See In re Henderson*, 133 S.W.3d 380, 381 (Tex. App. – Houston [1st Dist.] 2004, orig. proceeding).

Rules Specifically Related to Juvenile Appeals.

The general rules regarding indigent appellants in civil cases are contained in Texas Rule of Appellate Procedure 20.1, but Texas Family Code Section 56.02 simplifies and streamlines the provisions of the general rule. To the extent that the provisions of Rule 20.1 conflict with those of Section 56.02, the Family Code provisions prevail. *In the Matter of K.C.A.*, 36 S.W.3d 501, 503 (Tex. 2000).

When an attorney is *retained* in a juvenile appeal, if the attorney desires to have a reporter's record included in the appellate record, the attorney has the responsibility of obtaining and paying for that record, and for furnishing it in duplicate to the clerk in time to be included in the record. TEX. FAM. CODE § 56.02(a)(West 2009).

If the parent or other responsible person is not able to pay or give security for the preparation of the transcript, the trial court will order the court reporter to prepare the transcript without charge to the child's attorney. The court must first find, after a hearing or on an affidavit filed by the parent or other responsible adult, that that person is unable to pay or give security. TEX. FAM. CODE § 56.02(b) (West 2009). When the transcript is provided without charge and court so certifies, the transcript will be paid for out of the general funds of the county. TEX. FAM. CODE § 56.02(c)(West 2009). The reporter's record is to be in question and answer form unless a narrative transcript is requested. TEX. FAM. CODE § 56.02(d)(West 2009).

Agreed Records.

The parties to an appeal may agree on the contents of the record on appeal. "An agreed record will be presumed to contain all evidence and filings relevant to the appeal." TEX. R. APP. P. 34.2 (West 2009). This is an unwise procedure to follow, except in the most extraordinary of cases. Likewise, in lieu of a reporter's record, the parties may agree on a "brief statement of the case" by virtue or Texas Rule of Appellate Procedure 34.3. This is also unwise to do.

The Clerk's Record.

The clerk's record is basically a copy – certified by the clerk of the trial court – of all or part of the clerk's case file. Unless there is an agreed record, TEX. R. APP. P. 34.5(a)(West 2009) requires that the clerk's record in a civil case include copies of the following:

> (1) all pleadings on which the trial was held;
> (2) the court's docket sheet;
> (3) the court's charge and the jury verdict, or the court's findings of fact and conclusions of law;
> (4) the court's judgment or other order that is being appealed;
> (5) any requests for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
> (6) the notice of appeal;
> (7) any formal bill of exception;
> (8) any request for reporter's record, including a statement of appellate points where only a partial reporter's record is requested;
> (9) any request for preparation of the clerk's record;
> (10) a certified bill or costs; and
> (11) any other filing that the party designates to be included in the record.

As is obvious from the list of list of mandatory items, there are a lot of things that are not required but which are necessary to a lot of appeals. Denied pre-trial motions and requested jury charges spring to mind immediately. Because the list of mandatory items is so often lacking, the list permits parties to request additional items.

Rule 34.5(b) provides for this. This Rule permits any party to file a written designation of the record at any time before the clerk's record is prepared. The designation must specifically describe the requested items so that the clerk can identify them, and the request should not be a general designation of "all papers filed in the case." If a party requests unnecessary items, the appellate court may require that that party pay

the costs of preparation of the unnecessary items, *even if the requesting party prevails in the appeal.* The appellate court must accept a clerk's record or supplemental clerk's record even when the designation was untimely.

In some large urban counties like Bexar, the clerk of the juvenile court will prepare a rather complete clerk's record as a matter of course. It is wise to check the record as early as possible and to file a designation, and this is especially so in counties where the clerk will include only the mandatory items unless more is designated.

If a relevant item is omitted from the record, any party (or the trail court or the appellate court) may direct the clerk to prepare, certify and file in the appellate court a supplementary record. This request is done by letter to the clerk rather than by motion to the court. The supplemental record will become part of the appellate record. TEX. R. APP. P. 34.5(c)(West 2009).

If an item designated to be included in the clerk's record is lost or destroyed, the parties to the appeal may by stipulation deliver a copy of the item to the clerk for inclusion in the record. If the parties are unable to agree on this, the trial court must determine what constitutes an accurate copy of the missing item. TEX. R. APP. P. 34.5(e)(West 2009).

The clerk's record must be filed in the appellate court within 60 days after the judgment is signed. However, if a motion for new trial, motion to modify the judgment, a motion to reinstate, or a request for findings of fact and conclusions of law is timely filed, the clerk's record must be filed with 120 days after the judgment is signed. TEX. R. APP. P. 35.1(a)(West 2009). The clerk of the trial court is responsible for preparing, certifying and timely filing the clerk's record if a notice of appeal was timely filed and the person responsible for paying for the record has paid for it, has made satisfactory arrangements to pay for it, or is entitled to a free record. TEX. R. APP. P. 35.3(a)(West 2009).

The Reporter's Record.

The reporter's record is the transcript of the trial, plus the exhibits, where the trial is stenographically recorded, and a certified copy of the audio recording, where the trial is electronically recorded. TEX. R. APP. P. 34.6(a)(West 2009).[9]

The reporter's record is not prepared automatically. You must make a formal written request for it. TEX. R. APP. P. 34.6(b)(West 2009) provides:

> (1) *Request to court reporter.* At or before the time for perfecting the appeal, the appellant must request in writing that the official reporter prepare the reporter's record. The request must designate the exhibits to be

[9] All judicial proceedings under Chapter 54 of the Family Code except detention hearings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means, and detention hearings must be recorded on request. TEX. FAM. CODE § 54.09 (West 2009).

included. A request to the court reporter – but not the court recorder – must also designate the portions of the proceedings to be included.

(2) *Filing*. The appellant must file a copy of the request with the trial court clerk.

(3) *Failure to timely request.* An appellate court must not refuse to file a reporter's record or a supplementary reporter's record because of failure to timely request it.

Rule 34.6(c) of the Texas Rules of Appellate Procedure allows an appellant to request a partial reporter's record only, which contains a statement of the points to be presented on the appeal. The appellate court must presume that the partial reporter's record designated by the parties "constitutes the entire record for purposes of reviewing the stated points or issues," including factual and legal sufficiency of the evidence. This is a potentially dangerous procedure, and you would be well advised to pass on it.

Rule 34.6(d) permits liberal supplementation of the reporter's record. As is the case with a supplemental clerk's record, the appellant asks for supplementation by letter to the reporter instead of by motion to the court.

If there are inaccuracies in the reporter's record, the parties may agree to correct them without the reporter's recertification. TEX. R. APP. P. 34.6(e)(1) (West 2009). If the parties are unable to agree on whether or how to correct the reporter's record, the trial court must settle the dispute. If the trial court finds that that there are inaccuracies in the record, it will order the reporter to conform the record to what occurred at trial and to file certified corrections. TEX. R. APP. P. 34.6(e)(2)(West 2009). If the dispute arises after the record is filed in the appellate court, that court may submit the dispute to the trial court for resolution. TEX. R. APP. P. 34.6(e)(3)(West 2009).

When the reporter's record is lost or destroyed, Rule 34.6(f) of the Rules of Appellate Procedure is invoked. According to that Rule, an appellant is entitled to a new trial if:

(1) if the appellant has timely requested a reporter's record;

(2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or – if the proceedings were electronically recorded – a significant portion of the recording has been lost or destroyed or is inaudible;

(3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and

(4) the lost, destroyed, or inaudible portion of the reporter's record cannot be replaced by agreement of

> the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

"If the missing portion of the record is not necessary to the appeal's resolution, then the loss of that portion of the record is harmless under the rule, and a new trial is not required." *Isaac v. State*, 989 S.W.2d 754, 757 (Tex. Crim. App. 1999); *see Routier v. State*, 112 S.W.3d 554. 570-72 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 1040 (2004). However, if the missing portion of the record is necessary to the resolution of the case, then a new trial is required. In a juvenile case, where the missing portion of the record relates only to disposition, the adjudication should be affirmed and the disposition should be reversed and remanded for a new hearing. *In the Matter of E.D.C., Jr.*, No. 04-05-00391-CV, 2007 Tex. App. LEXIS 1270 at *30-*39 (Tex. App. – San Antonio Feb. 21, 2007, no pet.)(mem. op.).

The court reporter may use the original exhibits in preparing the reporter's record, but must copy them for inclusion in the appellate record, unless ordered to include the original exhibits. If the trial court believes that the original exhibits should be inspected or sent to by the appellate court, the trial court must make an order for the safekeeping, transportation and return of the original exhibits. On the motion of any party, or on its own motion, the appellate court may direct the clerk to send it the original exhibits. TEX. R. APP. P. 34.5(g)(West 2009).

The filing of the reporter's record is controlled by the same timetable as the filing of the clerk's record. It must be filed within 60 days after the judgment is signed, except that it must be filled within 120 days if a timely motion for new trial, motion to modify the judgment, motion to reinstate, or request findings of fact and conclusions of law has been filed. TEX. R. APP. P. 35.1 (West 2009). It is the responsibility of the official or deputy reporter to file the record if a notice of appeal has been filed, the appellant has requested a reporter's record, and the responsible party has paid, made arrangements to pay, or entitled to a free record. TEX. R. APP. P. 35.3(b)(West 2009).

VIII. THE APPELLANT'S BRIEF.

Due Date.

Texas Rule of Appellate Procedure 38.6(a) controls the due date for the appellant's brief. This Rule provides:

> Except in a habeas corpus or bail appeal, which is governed by Rule 31, an appellant must file a brief within 30 days – 20 days in an accelerated appeal – after the later of:
>
> (1) the date the clerk's record was filed; or
>
> (2) the date the reporter's record was filed.

In calculating this time line, do not count the day the record is filed. The last day of the time line is included in the calculation, unless it falls on a Saturday, Sunday, or legal holiday, in which case the last day is extended to the end of the next day that is not a Saturday, Sunday, or legal holiday. TEX. R. APP. P. 4.1(a)(West 2009).

It occasionally happens that the clerk's office is closed or inaccessible on the due date of the brief, even though it would otherwise be open. Weather situations such as hurricanes or blizzards, as well as emergencies such as the September 11th attacks, come to mind as examples of this. The Rules of Appellate Procedure take into account such a possibility. "If the act to be done is filing a document, and if the clerk's office where the document is to be filed is closed or inaccessible during regular hours on the last day for filing the document, the period for filing extends to the next day when the clerk's office is open or accessible." TEX. R. APP. P. 4.1(b)(West 2009).

Extensions.

TEX. R. APP. P. 38.6(d)(West 2009) provides that "On motion complying with Rule 10.5(b), the appellate court may extend the time for filing a brief and may postpone submission of the case. A motion to extend the time to file a brief may be filed before or after the date the brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case."

Rule 10 of the Texas Rules of Appellate Procedure governs motions in appellate courts. Rule 10.1(a) states the general rules concerning motions, and Rule 10.5(b) states the specific requirements for motions to extend time. These Rules should be read in conjunction. Motions to extend times need not be verified. A proposed order should not be attached to the motion to extend time.

TEX. R. APP. P. 10.1(a)(West 2009) provides:

> Unless these rules prescribe another form, a party must apply by motion for an order or other relief. The motion must:
>
> (1) contain or be accompanied by any matter specifically required by a rule governing such a motion;
> (2) state with particularity the grounds on which it is based;
> (3) set forth the order or relief sought;
> (4) be served and filed with any brief, affidavit, or other paper in support of the motion; and
> (5) *in civil cases, contain or be accompanied by a certificate stating that the filing party conferred, or made a reasonable attempt to confer, with all other parties about the merits of the motion and whether those parties oppose the motion.*
>
> (emphasis added).

TEX. R. APP. P. 10.5(b)(1)(West 2009) sets out additional information that its required to be included in a motion for an extension of time. These motions must state: (A) the deadline for filing the item in question; (B) the length of extension sought; (C) the facts relied on to reasonably explain the need for the extension; and (D) the number of previous extensions granted.

I have encountered a great diversity among the various Courts of Appeals where I have practiced regarding motions for extension to file a brief. The Courts have different policies regarding extensions, which are codified in their Local Rules in some cases. In the Fourth Court of Appeals (San Antonio), where I most often practice, the Court will routinely grant a first extension for 30 days, but is reluctant to grant successive extensions.

A motion for extension must state with particularity the reasons on which is it based. My usual reason is a heavy caseload, and I include in my motions a list of the briefs that I have filed in the past month, as well as the other major briefs that are due to be filed soon. This reason is considered acceptable to the Fourth Court. On the other hand, based on my experience there, it is not an acceptable reason in the Seventh Court of Appeals (Amarillo).

The routine extension times, where they exist, vary from Court to Court. In the Eighth Court of Appeals (El Paso), a first extension of 45 days and a second extension of 30 days are permitted. 8TH TEX. APP. (EL PASO) LOC. R. 38.2(a). In the Tenth Court of Appeals (Waco), a first extension of 60 days is permitted, but further extensions are rarely granted. 10TH TEX. APP. (WACO) LOC. R. 7(d). Where a Court of Appeals has Local Rules – and not all do – they are available on the respective Court's website. If you are unsure about the rules or policies of the individual Court where your case is pending, you should contact the clerk of the Court, or an attorney who regularly practices there.

Note that you also have to certify that you have conferred or attempted to confer with the attorney for the other side and state whether or not that attorney opposes your motion.

Contents.

Rule 38.1 of the Texas Rules of Appellate Procedure defines the required contents of an appellant's brief. You should follow this Rule literally, and it is quoted verbatim below. This rendition of the Rule includes the amendments affective September 1, 2008. The appellate courts want regularity of from in appellate briefs. Therefore, you may be creative in the contents and arguments of your brief, but not in the form. In other words, it is better to strive for Beethoven's Ninth Symphony rather than the Beatles' "White Album."

Appellant's Brief. The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) Identity of parties and counsel. The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8.[10]

(b) Table of contents. The brief must have a table of contents with reference to pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) Index of authorities. The brief must have an index of authorities arranged alphabetically and indicating the page of the brief where the authorities are cited.

(d) Statement of the case. The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.

(e) Statement regarding oral argument. The brief may include a statement explaining why oral argument should or should not be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of the party's brief.

(f) Issues presented. The brief 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.

(g) Statement of facts. The brief must state concisely and without argument the facts pertinent to the issues or points presented. In a civil case, the court will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.

(h) Summary of the argument. The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. The summary must not merely repeat the issues or points presented for review.

[10] Relating to the use of initials to identify a juvenile appellant.

(i) Argument. The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.

(j) Prayer. The brief must contain a short conclusion that clearly states the nature of the relief sought.

(k) Appendix in civil cases.

(1) *Necessary contents.* Unless voluminous or impracticable, the appendix must contain a copy of:

(A) the trial court's judgment or other appelable order from which relief is sought;

(B) the jury charge and verdict, if any, or the court's findings of fact and conclusions of law; and

(C) the text of any rule, regulation, or ordinance, statute, constitutional provision or other law (excluding case law) on which the argument is based, and the text of any contract or document that is central to the argument.

(2) *Optional contents.* The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, laws, documents on which the suit was based, pleadings, excerpts from the reporter's record, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the brief.

As with all documents filed in connection with an appeal, the brief must contain a certificate of service. TEX. R. APP. P. 9.5(a) & (d)(West 2009). Service may be accomplished by personal delivery to any responsible person in the office of the lead counsel for the party served, by mail (certified mail not required), by commercial delivery service, or by fax. TEX. R. APP. P. 9.5(b)(West 2009). Service by email is not sanctioned by the Rules.

The Rules of Appellate Procedure do not mandate any particular citation form. Your briefing should conform to the rules of form found in the Harvard Law Review Association's *Bluebook: A Uniform System of Citation* and the Texas Law Review's *Texas Rules of Form* (the "green book').

Length.

The appellant's brief must be no longer than 50 pages, excluding the pages containing the identity of the parties and counsel, and statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, with the same exclusions. In a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90 pages, with the same exclusions. The court may, on motion, permit a longer brief. TEX. R. APP. P. 38.4 (West 2009).

Format.

TEX. R. APP. P. 9.4 (West 2009) contains a lengthy and hyper-technical list of the required format (or "form") of a brief and, for that matter, all other papers filed in an appeal. Unless the appellate court accepts another form "in the interest of justice," the brief must be produced by "standard typographic printing" or any duplicating process that produces a black image. The brief may be printed on both sides of the page, and the page must be white or nearly white and 8 ½ by 11 inches. There must be at least one-inch margins on the top, bottom, and both sides.

The text must be double-spaced, but footnotes, block quotations, short lists and issues or points of error must be in single space. The brief must be in 10-character-per-inch (cpi) nonproportionally spaced Courier typeface (if you use a typewriter), or in 13-point or larger proportionally spaced typeface (if you use a word processor). If you use a word processor, the footnotes must be no smaller than 10-point type. There is no required typeface. This paper is written in 12-point Arial typeface. My briefs are in 13-point Times New Roman typeface.

A brief should be bound so that it will life flat when open, and should have durable (i.e., cardstock) front and back covers, which should not be plastic or be red, black, or dark blue (probably because those colors make the file-mark unreadable). If you write a substantial number of briefs, you should invest in a binding machine. Otherwise, any good print shop, such as FedEx/Kinko's, can print and bind the brief for you rather quickly.

The brief cover must contain the case style, the case number, the title of the document ("Brief for Appellant," etc.), the name – or in juvenile appeals – the initials of the party filing the brief, the name, mailing address, telephone number, fax number (if any), and State Bar number of the lead counsel for the appellant. If the party requests oral argument, the request must appear on the cover of the first brief filed. There is no requirement to include your email address, but I do include mine on the front cover (and with the signature block).

The appendix may be bound with the brief or separately. It should be tabbed and indexed.

Copy to Client.

It may be stating the obvious, but you must send a copy of your brief to your client, unless the client has expressly advised you otherwise.[11] You should also send a copy to the client's parent or other responsible adult, unless the client has advised you not to do so. If your client is in TYC and you do not know the exact placement, you should send the brief to the client, in care of the TYC General Counsel's Office, P.O. Box 4260, Austin, Texas 78765. If the child is on probation in a placement unknown to you, you should send the brief in care of the Chief Juvenile Probation Officer of the county of commitment. Parents' and guardians' addresses may be generally found in the case record or through the office of the clerk of the trial court.

The Appellee's Brief.

The form for a brief for the appellee (the State in juvenile cases) is described in Texas Rule of Appellate Procedure 38.2 The State's briefs are often somewhat shorter than the appellants' briefs. The State's brief must be filed within 30 days after the date the appellant's brief was filed. TEX. R. APP. P. 38.6(b)(West 2009). The State, like the appellant, may seek an extension.

Reply Brief.

"The appellant may file a reply brief addressing any matter in the appellee's brief. However, the appellate court may consider and decide the case before the reply brief is filed." TEX. R. APP. P. 38.3 (West 2009). If the appellant files a reply brief, it must be filed within 20 days after the appellee's brief is filed. TEX. R. APP. P. 38.6(c)(West 2009). A reply brief is exactly what its name implies, and it may not raise any issue not addressed in the appellant's original brief. *Barrios v. State*, 27 S.W.3d 313, 321-22 (Tex. App. – Houston [1st Dist.] 2000, pet. ref'd), *cert. denied*, 534 U.S. 1024 (2001).

Nonconforming Briefs.

If a brief does not conform to the proper format, the appellate court may strike it and return it to the party who filed it, giving the party a deadline for correcting the error. A party may not use footnotes, smaller, or condensed typeface, or "compacted or compressed printing features" to avoid the formatting rules, and the court may strike any brief where such items are used to avoid the limits imposed by the rules. TEX. R. APP. P. 9.4(i)(West 2009).

With regard to the rules regarding content of briefs, the courts are to construe these liberally, but it may order the brief redrawn to conform to the rules, and if the redrawn brief does not conform, the court may strike the brief. TEX. R. APP. P. 38.9 (West 2009). If this happens, the result will be an affirmance, and the appellate court will treat the noncomforming brief as if it had never been filed. *See Barrick v.*

[11] This happens occasionally in cases involving sexual offenses against children, but is more likely to occur in adult cases than in juvenile cases.

Washington Mut., No. 14-05-01220-CV, 2007 Tex. App. LEXIS 3168 at * 4(Tex. App. – Houston [14th Dist.] April 26, 2007, no pet.)(mem. op.); *Harkins v. Dever Nursing Home*, 999 S.W.2d 571, 573 (Tex. App. – Houston [14th Dist.] 1999, no pet.).

Number of Copies.

An appellant must file an original and five copies of his or her brief, but a court may by local rule require the appellant to file more or fewer copies. TEX. R. APP. P. 9.3(a)(1)(C)(West 2009). The local rules of the Courts that have them may be found on the Courts' respective websites.

Failure to File.

In a civil case, if an appellant fails to file a brief, the appellate court may do one of three things. It may dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not harmed; it may decline to dismiss to appeal, and "give further direction to the case;" or, if an appellee's brief is filed, it may regard that brief as correctly presenting the case and affirm the case. TEX. R. APP. P. 38.8 (West 2009).

Electronic Briefs.

There is a growing trend toward filing of electronic briefs. Electronic briefs, or ebriefs, are required in the Supreme Court and Fifth Court of Appeals (Dallas). They are "requested" in the Tenth Court of Appeals (Waco). Ebriefs are optional as a courtesy in the Second (Fort Worth), Third (Austin), and Fourth (San Antonio) Courts of Appeals. These briefs may be filed either by email, CD, or DVD. These are *in addition to* the mandatory printed and bound briefs. The Fourteenth Court of Appeals (Houston) allows the filing of one paper original and one ebrief (on CD or floppy disk) in lieu of multiple paper briefs. Ebriefs are placed online on the websites of the Supreme Court and the Fifth and Tenth Courts of Appeals. Currently, ebriefs are apparently not accepted in the First (Houston), Sixth (Texarkana), Seventh (Amarillo), Eighth (El Paso), Ninth (Beaumont), Eleventh (Eastland), Twelfth (Tyler), and Thirteenth (Corpus Christi) Courts. The trend toward ebriefs is likely to expand to other Courts in the future.

Oral Argument.

The right to oral argument is covered by Texas Rule of Appellate Procedure 39.1, which was amended effective September 1, 2008. By virtue of this amendment, a party who has filed a brief and timely requested oral argument may argue the case before a three-judge panel, unless the appellate court decides that oral argument is unnecessary, for any of the following reasons: (1) the appeal is frivolous, (2) the dispositive issue or issues have been authoritatively decided, (3) the facts and legal arguments are adequately presented in the briefs and case record, or (4) the process of decision would not be significantly aided by oral argument.

The time allowed for oral argument will be set by the appellate court, and counsel should not go over the time limit. TEX. R. APP. P. 39.3 (West 2009). The length of time permitted is set by local rules and practices.

Harm Analysis.

Texas Rule of Appellate Procedure 44 sets forth the standards for reversible error, or harm analysis. The Rule has different standards for civil and criminal cases, and the application of the Rule to juvenile cases exemplifies that there is sometimes an identity crisis in these cases.

TEX. R. APP. P. 44.1(a)(West 2009) contains the standard for review in civil cases. By this standard, no judgment may be reversed on the ground that the trial court made an error of law unless the Court of Appeals concludes that the error: (1) probably caused the rendition of an improper judgment, or (2) probably prevented the appellant from properly presenting the case to the Court of Appeals.

TEX. R. APP. P. 44.2(a)(West 2009) contains the standard for review for constitutional error in criminal cases: If the constitutional error is subject to harm analysis, the Court of Appeals must reverse a judgment of conviction or punishment unless it determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. With regard to non-constitutional errors, TEX. R. APP. P. 44.2(b)(West 2009) mandates that the error be disregarded unless it affects substantial rights.

As these rules apply to juvenile cases, there is a distinction between determinate and non-determinate sentencing cases, and between the adjudication and disposition phases. All of the jurisprudence has come from the Courts of Appeals, rather than the Supreme Court. With regard to *adjudication* phase error, the Supreme Court has declined to decide which standard of reversible error applies. *In the Matter of D.I.B.*, 988 S.W.2d 753, 756 (Tex. 1999). The case involved the adjudication phase of a determinate sentencing case. On appeal, the State relied on the civil standard of reversible error, and the child did not make a constitutional challenge to the application of the civil rules. Thus, the Supreme Court felt it was "not called upon to decide whether the criminal rule should govern a harm analysis in a juvenile cases such as this one." *Id.*

Several years later, the First Court of Appeals (Houston) was called upon to undertake a harm analysis relating to error arising in the adjudication phase of a determinate sentencing case. Because the appellant was subject to a possible 20-year sentence in that case, the appellate court applied the criminal standard for reversible error, but expressly refrained from deciding what harm analysis would be appropriate in the adjudication phase of a non-determinate case. *In the Matter of L.R.*, 84 S.W.3d 701, 707 (Tex. App. – Houston [1st Dist.] 2002, no pet.).

With regard to harm analysis of error at the *disposition* phase, the law, at least as declared by the intermediate appellate courts, is clearer. The appellate court reviews the

disposition phase of a juvenile proceeding with the criminal harm analysis of Rule 44.2 in a determinate sentencing appeal, but utilizes the civil harm analysis of Rule 44.1 in an indeterminate sentencing case. *In the Matter of C.J.M.*, 167 S.W.3d 892, 895 (Tex. App. – Fort Worth 2005, pet. denied); *In the Matter of J.H.*, 150 S.W.3d 477, 485 (Tex. App. – Austin 2004, pet. denied); *In the Matter of D.V.*, 955 S.W.2d 379, 380 (Tex. App. – San Antonio 1997, no pet.).

***Anders* Briefs in Juvenile Cases.**

When, in the opinion of counsel for the appellant, the appeal is wholly frivolous and without merit, counsel should file a motion to withdraw, accompanied by a brief in support of that motion, or an *Anders* brief. The brief must refer to anything in the record that might arguably support an appeal. *Anders v. California*, 386 U.S. 738, 744 (1967); *In the Matter of D.A.S.*, 973 S.W.2d 296, 299 (Tex. 1998)(orig. proceeding).

The appointed attorney for the appellant should file a motion to withdraw, an *Anders* brief, and "notice and instructions to both the juvenile and the juvenile's guardians." The "instructions" should advise the juvenile and the guardian of their right to examine the record and file their own brief. *In the Matter of A.L.H.*, 974 S.W.2d 359, 361 (Tex. App. – San Antonio 1998, no pet.) "Once Appellant's court-appointed counsel files a motion to withdraw on the ground that the appeal is frivolous and fulfils the requirements of *Anders*, this court is obligated to undertake an independent examination of the record and essentially re-brief the case for Appellant to see if there is any arguable ground that may be raised on Appellant's behalf." *In the Matter of R.W.G.*, No. 02-02-00083-CV, 2003 Tex. App. LEXIS 2653 at *3 (Tex. App. – Fort Worth March 27, 2003, no pet.)(mem. op.).

"Under the *Anders* procedure, both the juvenile's attorney and the court of appeals would conduct an independent review of the record to determine whether there are any arguable issues on appeal. If the attorney *and* the court of appeals concludes that the appeal is without merit, and counsel is permitted to withdraw, a copy of counsel's motion and *Anders* brief would be furnished to the juvenile client and the juvenile's parent or guardian. The juvenile would then have the ability to advance his or her appeal through a parent, legal guardian, next friend, or guardian ad litem." *In the Matter of D.A.S.*, 973 S.W.2d at 299 (emphasis in original).

If the appellate court concludes that that the record presents an arguable issue, it will grant the motion to withdraw, but will order the trial court to appoint new appellate counsel. *See In the Matter of E.C.*, 216 S.W.2d 424, 425-26 (Tex. App. – San Antonio 2006, no pet.). If the appellate court concludes that the appeal is indeed frivolous, it will grant the motion to withdraw and affirm the judgment of the trial court. *See In the Matter of F.C.M.*, No. 04-07-00827-CV, 2008 Tex. App. LEXIS 4459 (Tex. App. – San Antonio June 18, 2008, no pet.)(mem. op.).

Mootness.

Occasionally a child "ages out" of the system before the appeal is decided, and the case becomes moot. Mootness occurs "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Murphy v. Hunt*, 455 U.S. 478, 481 (1982). In the context of a juvenile appeal, this typically happens where a child appeals a disposition of probation in a placement and has turned 18 before the case is resolved. When it occurs, the appellate court should dismiss the appeal as moot. *See In the Matter of L.S.*, No. 04-07-00751-CV, 2008 Tex. App. LEXIS 5660 (Tex. App. – San Antonio July 30, 2008, no pet.)(mem. op.). It should be noted that a case does not become moot when an order of *adjudication* is on appeal, because the child still has a legally cognizable interest in clearing his or her record.

Patience Is a Virtue: Waiting for the Opinion.

There is no set timeline for the issuance of an opinion by the Court of Appeals. An appeal of an order that takes custody of a child from the child's parent, guardian, or custodian has precedence over all other appeals. TEX. FAM. CODE § 56.01(h)(West 2009). Otherwise, the only guidance is the requirement that "The court of appeals should render its judgment promptly after submission of a case." TEX. R. APP. P. 43.1 (West 2009). There is a great variance among the Courts of Appeals in the length of the wait. The Fourth Court (San Antonio) usually issues its opinion three or four months after all briefs have been filed. The Seventh Court (Amarillo) is even prompter. On the other hand, the Eight Court (El Paso) usually takes a much longer period.

IX. PROCEEDINGS FOLLOWING AN UNFAVORABLE DECISION.

If the decision of the Court of Appeals is unfavorable, and if appellate counsel feels that the case should be pursued further, counsel may file a motion for rehearing in the Court of Appeals and/or a petition for review in the Supreme Court of Texas.

Motion for Rehearing.

A motion for rehearing may be filed within 15 days after the Court of Appeals renders its judgment or order. After a motion for rehearing is decided, a further motion for rehearing may be filed only if the Court, in its decision on the first motion, modifies its judgment, vacates is judgment and renders a new judgment, or issues and opinion in overruling a motion for rehearing. TEX. R. APP. P. 49.1 (West 2009). A motion for rehearing is not required to preserve error, and is not a prerequisite to filing a petition for review in the Supreme Court. TEX. R. APP. P. 49.8 (West 2009). The motion must be no longer than 15 pages. TEX. R. APP. P. 49.9 (West 2009).

A party may also file a motion for *en banc* reconsideration, as a separate motion, with or without filing a motion for rehearing. This motion should also be filed within 15

days after the judgment or order of the Court of Appeals. TEX. R. APP. P. 49.6 (West 2009).

A party may not file a motion for rehearing in the Court of Appeals after the party has filed a petition for review in the Supreme Court, unless the Court of Appeals modifies its opinion or judgment after the petition for review is filed. TEX. R. APP. P. 49.10 (West 2009).

Petition for Review.

The Supreme Court may review a final judgment of a Court of Appeals in a petition for review addressed to the "Supreme Court of Texas." The petition for review procedure replaces the former writ of error procedure. TEX. R. APP. P. 53.1 (West 2009). The likelihood that the Supreme Court will grant a petition in a juvenile appeal and decide a juvenile case is rather slim. The Court has issued only a tiny handful of merits decisions in juvenile appeals since the beginning of 2007.[12]

Pursuant to TEX. R. APP. P. 53.2 (West 2009), the petition for review should contain the following, in the order indicated:

1. A complete list of the parties to the trial court's judgment, and the names and addresses of trial and appellate counsel.
2. A table of contents keyed to the pages of the petition. The table must indicate the subject matter of each issue or point, or groups of issues or points.
3. An alphabetical index of authorities, keyed to the pages of the petition.
4. A statement of the case, which should seldom exceed one page and not discuss the facts. The statement should include:
    a. A concise description of the nature of the case (i.e., that it is a juvenile case);
    b. The name of the trial judge who signed the judgment appealed from;
    c. The designation of the trial court and the county where located;
    d. The disposition of the case in the trial court;
    e. The parties in the Court of Appeals;
    f. The district of the Court of Appeals;
    g. The names of the justices who participated in the opinion of the Court of Appeals, the author of the opinion, and the author of any separate opinion;
    h. The citation of the Court of Appeals' opinion; and
    i. The disposition by the Court of Appeals, including the disposition of any motion for rehearing or motion for *en banc* reconsideration.
5. A statement of the basis for the jurisdiction of the Supreme Court.

[12] *In the Matter of B.W.*, No. 08-1044, 2010 Tex. LEXIS 446 (Tex. June 22, 2010)(publication status pending)(appeal by juvenile respondent); *In the Matter of R.D.*, 304 S.W.3d 368 (Tex. 2010)(appeal by juvenile respondent); *In the Matter of H.V.*, 252 S.W.3d 319 (Tex. 2008)(appeal by the State pursuant to Family Code § 56.03(5)). *See also In re Hall*, 286 S.W.3d 925 (Tex. 2009)(denial of *mandamus* in juvenile case).

6. A statement of all issues presented for review. If the matter complained of originated in the trial court, it should have been preserved there for appellate review and presented as a point of error in the Court of Appeals.
7. A statement of facts, in which the petition affirms that the Court of Appeals correctly stated the nature of the case, with the exception of the particulars pointed out. The petition must state without argument the facts and the procedural background of the case, supported by record references.
8. A succinct, clear and accurate summary of the argument.
9. A clear and concise argument for the contentions made, with appropriate citations to the record and to authorities relied on. The argument need not address every issue or point included in the statement of issues or point. The argument should state the reasons why the Supreme Court should grant the petition, with references to the factors listed in Rule 56.1(a). Since the Supreme Court will consider the opinion of the Court of Appeals along with the petition, statements in the opinion need not be repeated.
10. A short conclusion of prayer, stating the nature of the relief sought.
11. An appendix containing: (1) the judgment or appealable order of the trial court, (2) the jury charge and verdict, or findings of fact and conclusions of law, if any, (3) the opinion and judgment of the Court of Appeals, and (4) the text of any rule, regulation, ordinance, statute, constitutional provision an which the argument is based, and the text of any contract or other document central to the argument.

Any other party to the appeal may file a response to the petition, although this is not mandatory. If no response is timely filed, or if the opposing party waives a response, the Supreme Court will consider the petition without a response. If a response is filed, it must conform to the requirements for a petition, but with several exceptions set out in the Rule. TEX. R. APP. P. 53.3 (West 2009). A party may raise issues that were briefed in the Court of Appeals but not decided there. TEX. R. APP. P. 53.4 (West 2009). A petitioner may also file a reply to a response filed by the other party. TEX. R. APP. P. 53.5 (West 2009).

Texas Rule of Appellate Procedure 20.1 discusses indigency. Since it discusses situation where a party "cannot pay the costs in *an* appellate court," and since there are no separate rules regarding indigency in the Supreme Court, Rule 20.1 would appear to apply to indigents seeking review there. Likewise, Section 56.02 of the Family Code controls over Rule 20.1, to the extent that there is a conflict. *In the Matter of K.C.A.*, 36 S.W.3d 501, 503 (Tex. 2000).

The petition and any response[13] must be no longer than 15 pages, exclusive of the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service and the appendix. A reply may be no longer than eight pages, with the

[13] The *response* is filed by the respondent. The *reply* is filed by the petitioner, replying to the respondent's response.

same exclusions. The Supreme Court may, on motion, may permit a longer petition, response, or reply. TEX. R. APP. P. 53.6 (West 2009).

The petition must be filed with the clerk of the Supreme Court within 45 days after the following: (1) the date the Court of Appeals rendered judgment, if no motion for rehearing or *en banc* reconsideration was filed; or (2) the date of the Court of Appeals' last ruling on all timely filed motions for rehearing. TEX. R. APP. P. 53.7 (West 2009). Please note that this is different in two ways from the procedure for filing a petition for discretionary review in a criminal case: First, the petition is filed with the clerk of the Supreme Court rather than with the clerk of the Court of Appeals. Second, you have 45 days rather than 30 days. However, if the petition is mistakenly filed with the Court of Appeals, it will be deemed to have been filed the same day with the clerk of the Supreme Court, and a clerk of the Court of Appeal must immediately send the petition to the clerk of the Supreme Court. TEX. R. APP. P. 53.7(g)(West 2009).

The Supreme Court may extend the time to file a petition for review if the party files a motion complying with Rule 10.5(b) no later than 15 days after the last day for filing the petition. TEX. R. APP. P. 53.7(f)(West 2009). On motion showing good cause, the Court may permit the petition to be amended. TEX. R. APP. P. 53.8. If a petition does not conform with the Rules, the Supreme Court may order the petition to be revised. TEX. R. APP. P. 53.9 (West 2009). An original an 11 copies of the petition should be filed. TEX. R. APP. P. 9.3(b)(West 2009).

Orders on the Petition for Review.

The granting of a petition is discretionary with the Supreme Court. The factors which the Supreme Court will consider in making its decision include:

1. Whether the justices of the Court of Appeals disagree on an important issue of law;
2. Whether there is a conflict between the courts of appeals on an important point of law;
3. Whether the case involves the construction or validity of a statute;
4. Whether the case involves constitutional issues;
5. Whether the Court of Appeals has committed an error of law that is so important to the state's jurisprudence that it should be corrected; or
6. Whether the Court of appeals has decided an important question of law that should be but has not been resolved by the Supreme Court.

TEX. R. APP. P. 56.1(a)(West 2009).

The Supreme Court may grant the petition, or may decide not to grant it. In the latter case, the Court may make one of several notations, including the following:

1. *Denied.* This means that the Court is not satisfied that the opinion of the Court of Appeals has correctly stated the law in all respects, but the opinion presents no error requiring reversal.
2. *Dismissed w.o.j.* This means that the Court lacks jurisdiction.

3. *Refused*. This means that the Supreme Court has determined that the Court of Appeals' judgment is correct and that the legal principles announced in the opinion are also correct. The Court of Appeals' opinion in this situation has the same precedential value as an opinion of the Supreme Court.
4. *Improvident grant*. If a petition has previously been granted but the Court decides that it should not have been granted, the Court may set aside the order granting review and dismiss the petition or refuse review as though it had never been granted.

TEX. R. APP. P. 56.1(b) – (d)(West 2009).

If a case is moot, the Court may, after notice to the parties, grant the petition for review and dismiss the case without addressing the merits. TEX. R. APP. P. 56.2 (West 2009).

Briefs in the Supreme Court.

According to Texas Rule of Appellate Procedure 55.1, a petitioner's brief on the merits must not be filed unless the Supreme Court requests it. The Court may request it with or without the granting of a petition for review. TEX. R. APP. P. 55.2 (West 2009) lists the items that a petitioner's brief on the merits must contain. These items will not be described in detail, unless they differ from the description in the discussion of the petition for review. The brief must be confined to the issues or points stated in the petition, and must contain the following items in the following order:

1. The identity of the parties and counsel.
2. A table of contents.
3. An index of authorities.
4. A statement of the case.
5. A statement of jurisdiction.
6. A statement of the issues presented.
7. A statement of facts.
8. A summary of the argument of similar nature as the summary of the argument in the brief in the Court of Appeals.
9. An argument.
10. A prayer.

The brief on the merits should not contain an appendix, because that was included in the petition for review. After the respondent has filed its brief, the petitioner may file a reply brief addressing any matter in the respondent's brief. TEX. R. APP. P. 55.4 (West 2009). "As a brief on the merits or a brief in response, a party may file the brief that the party filed in the court of appeals." TEX. R. APP. P. 55.5 (West 2009). An original and 11 copies of the brief should be filed. TEX. R. APP. P. 9.3(b)(West 2009).

The brief on the merits must not exceed 50 pages, with the same exclusions applicable to the petition for review. A reply brief may not exceed 25 pages, with the same exclusions. The Court may, on motion, permit a longer brief. TEX. R. APP. P. 55.6 (West 2009). The brief must be filed with the Clerk of the Supreme Court in accordance

with the briefing schedule stated in the notice that the Court has requested briefing. If there is no briefing schedule in the notice, the petitioner's brief is due within 30 days after the date of the notice. A reply brief is due 15 days after the respondent's brief is filed. TEX. R. APP. P. 55.7 (West 2009).

Submission and Oral Argument.

If at least six members of the Court agree, a petition may be granted and an opinion handed down without oral argument. TEX. R. APP. P. 59.1 (West 2009). If the Court decides that oral argument would be helpful, the Court will set the case for oral argument. Oral argument should emphasize and clarify the written arguments in the briefs. The Court will specify by order the length of time permitted for arguments. TEX. R. APP. P. 59.2 – 59.4 (West 2009).

Harm Analysis.

The standard for reversible error, or harm analysis, is analogous to the standard for civil appeals at the Court of Appeals level: No judgment may be reversed unless the Supreme Court concludes that the error complained of probably caused the rendition of an improper judgment or probably prevented the petitioner from properly presenting the case in the appellate courts. TEX. R. APP. P. 61.1 (West 2009). There are no Supreme Court cases addressing whether the criminal standard for reversible error applies in determinate sentencing cases at this level.

Motions for Rehearing.

A party may file a motion for rehearing in the Supreme Court within 15 days of the date the Court renders its judgment and this time limit may be extended on proper motion. The motion must specify the points relied on for rehearing, and the non-filing party need not file a response unless directed to do so by the Court. The Court will not consider a second motion for rehearing. The motion for rehearing is limited to 15 pages. TEX. R. APP. P. 64.1 – 64.6 (West 2009).

X. SUFFICIENCY OF THE EVDIENCE IN JUVENILE CASES.

Due to the almost infinite possible appellate issues, this paper will not address specific points of error that may be included in an appeal of a juvenile case. However, since sufficiency of the evidence is included in many – perhaps most – juvenile appeals, the paper will end with a short discussion of how sufficiency applies in these cases. Preservation of factual sufficiency error following a jury trial has already been discussed.

Standard of Review: Adjudication.

At the adjudication phase of a juvenile case, only material, relevant, and competent evidence, in accordance with the Texas Rule of Evidence applicable to

criminal cases and Chapter 38 of the Texas Code of Criminal Procedure may be considered. TEX. FAM. CODE §§ 51.17(c) & 54.03(d)(West 2009). The charges against the child must be proven beyond a reasonable doubt, as in criminal cases. TEX. FAM. CODE §§ 51.17(a) & 54.03(f)(West 2009).

It therefore follows that appellate courts reviewing juvenile adjudications apply the criminal standards for review for legal and factual sufficiency of the evidence. *In the Matter of J.O.T.*, No. 13-06-00226-CV, 2007 Tex. App. LEXIS 5637 at *3 (Tex. App. – Corpus Christi July 19, 2007, no pet.)(mem. op); *In the Matter of T.E.G.*, 222 S.W.3d 677, 678 (Tex. App. – Eastland 2007, no pet.); *In the Matter of J.W.*, 198 S.W.3d 327, 330 (Tex. App. – Dallas 2006, no pet.); *In the Matter of K.H.*, 169 S.W.3d 459, 462 (Tex. App. – Texarkana 2005, no pet.); *In the Matter of K.B.*, 143 S.W.3d 194, 199 (Tex. App. – Waco 2004, no pet.); *In the Matter of M.C.L.*, 110 S.W.3d 591, 593 (Tex. App. – Austin 2003, no pet.); *In the Matter of E.R.L.*, 109 S.W.3d 123, 127 (Tex. App. – El Paso 2003, no pet.); *In the Matter of K.T.*, 107 S.W.3d 65, 71 (Tex. App. – San Antonio 2003, no pet.); *In the Matter of J.D.P.*, 85 S.W.3d 420, 422 (Tex. App. – Fort Worth 2002, no pet.); *In the Matter of G.A.T.*, 16 S.W.3d 818, 828 (Tex. App. – Houston [14th Dist.] 2000, pet. deined).

When reviewing legal sufficiency of the evidence, the appellate court reviews the evidence in the light most favorable to the verdict, and determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316 (1979). The court considers all the evidence that sustains the conviction (adjudication), whether properly or improperly admitted. *Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). When the court sustains a legal sufficiency point, it will usually reverse the trial court's judgment and render a judgment that the child did not engage in delinquent conduct. *In the Matter of V.V.C.*, No. 04-07-00166-CV, 2008 Tex. App. LEXIS 2891 at *5 (Tex. App. – San Antonio April 23, 2008, no pet.)(mem. op.); *Swearingen v. State*, 101 S.W.3d 89, 95 (Tex. Crim. App. 2003); *but see In the Matter of K.H.*, 169 S.W.3d 459, 466 (Tex. App. – Texarkana 2005, no pet.)(reversing and *remanding* following a finding of legal insufficiency, because the child was already on probation for a prior act at the time he was committed to the Texas Youth Commission in the case under appeal).

When reviewing factual sufficiency of the evidence, the appellate court will review all of the evidence in a neutral light. *Cain v. State*, 958 S.W.2d 404, 408 (Tex. Crim. App. 1997). It will set aside the jury's verdict only if the evidence is either: (1) so weak that the verdict is clearly wrong or manifestly unjust, or (2) if it is against the great weight and preponderance of the evidence. *Johnson v. State*, 23 S.W.3d 1, 10-11 (Tex. Crim. App. 2000). When an appellate court sustains a factual sufficiency point, the proper remedy is reversal and remand for a new trial. *Drichas v. State*, 175 S.W.3d 795, 799 (Tex. Crim. App. 2005).

Standard of Review: Disposition.

The Courts of Appeals are divided regarding the standard of review of dispositions, including motions to modify. Courts have broad discretion in determining suitable disposition for children. *In the Matter of K.J.N.*, 103 S.W.3d 465, 465-66 (Tex. App. – San Antonio 2003, no pet.). This is especially true in modification cases. *In the Matter of D.R.A.*, 47 S.W.3d 813, 815 (Tex. App. – Fort Worth 2001). Accordingly, disposition orders are reviewed under an abuse of discretion standard, but that begins the discussion rather than ends it, because there are at least four abuse of discretion standards applied by the various intermediate appellate courts.

The Third Court of Appeals (Austin) has held that a disposition removing a child from home is reviewed on abuse of discretion in applying the proper standards for removal, and that the trial court's findings are reviewable under the criminal sufficiency standards of review. *In the Matter of C.C.*, 13 S.W.3d 854, 857 (Tex. App. – Austin 2000, no pet.). Note that this case involves removal of the child from home rather that placing the child on probation at home.

In most Courts of Appeals, legal and factual sufficiency, applying civil standards, are relevant in assessing whether the trial court abused its discretion. *In the Matter of A.M.O.*, No. 07-07-00284-CV, 2008 Tex. App. LEXIS 571 at *2-*3 (Tex. App. – Amarillo Jan. 25, 2008, no pet.)(mem. op)(applying civil no-evidence standard); *In the Matter of T.E.G.*, 222 S.W.3d 677, 678-79 (Tex. App. – Eastland 2007, no pet.); *In the Matter of C.G.*, 162 S.W.3d 448, 452 (Tex. App. – Dallas 2005, no pet.); *In the Matter of H.R.C.*, 153 S.W.3d 266, 269 (Tex. App. – El Paso 2004, no pet.)(applying civil no-evidence standard); *In the Matter of J.D.P.*, 85 S.W.3d 420, 426 (Tex. App. – Fort Worth 2002, no pet.).

The Tenth Court of Appeals (Waco) has held that that a sufficiency of the evidence review is not appropriate at the disposition phase, and that abuse of discretion alone controls. *In the Matter of S.S.*, No. 10-03-00270-CV, 2004 Tex. App. LEXIS 9064 at *2 (Tex. App. – Waco Oct. 13, 2004, no pet.)(mem. op.). A court abuses its discretion when it acts arbitrarily or unreasonably, without reference to the guiding principles stated in the Family Code. *In the Matter of A.G.*, No. 10-06-00107-CV, 2007 Tex. App. LEXIS 5310 at *1 (Tex. App. – Waco July 5, 2007, no pet.)(mem. op.).

Finally, the Fourth Court of Appeals (San Antonio) applies a criminal abuse of discretion standard of review, divorced from standards of legal or factually sufficiency of the evidence. The appellate court defers to the trial court's findings of fact, but determines *de novo* whether the facts supported by the record justifies the disposition order in light of the purposes of the Juvenile Justice Code. *In the Matter of K.T.*, 103 S.W.3d 65, 66 (Tex. App. – San Antonio 2003, no pet.), *but see In the Matter of J.L.K.*, No. 04-07-00588-CV, 2008 Tex. App. LEXIS 4015 at *3 (Tex. App. – San Antonio June 4, 2008, no pet.)("A trial court does not abuse its discretion if some evidence supports its decision.").

It should be noted that the burden for the appellate attorney is particularly difficult in the appeal of a modification of disposition case. This is because the quantum of proof required in order to modify a previous order of disposition is low. In order to modify disposition in the juvenile case, the trial court must find only that the child violated a reasonable and lawful order of the court (i.e., condition of probation.) *In the Matter of J.P.*, 136 S.W.3d 629, 631 (Tex. 2004); *In the Matter of T.P.*, 251 S.W.3d 212, 214 (Tex. App. – Dallas 2008, no pet.). If the underlying case is a felony, the trial court may modify disposition and commit the child to the Texas Youth Commission. TEX. FAM. CODE § 54.05(f)(West 2009).

XI. STANDARDS OF APPELLATE CONDUCT.

In 1999, the Supreme Court of Texas and the Court of Criminal Appeals of Texas issued a joint order detailing the duties owed by appellate counsel to their clients, to the appellate courts, and to other counsel, as well as the appellate courts' relationship with counsel. These Standards of Appellate Conduct may be accessed online at http://www.tex-app.org/standards.html.

XII. A FINAL NOTE.

Because of space limits, this paper does not address most merits issues that may arise in juvenile appeals. In addition, it does not contain any forms or sample motions or briefs. However, I would be delighted to share any forms and samples that I have used over the years with anyone who wants them. Please feel free to call me or send me a fax or an email.

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July 1, 2010

Appendix

Appellate Timetable for Juvenile Appeals[14]
Updated July 1, 2010

	Event	Time Limit	Rule
A.	Judgment/Order signed[15]		
B.	File MNT	A + 30	TRAP 21.4(a)
C.	Present MNT to trial court	B + 10 B + 75 with court's permission	TRAP 21.6
D.	Hearing on MNT	A + 75	TRAP 21.8
E.	File notice of appeal	A + 30 if no MNT A + 90 if MNT	TRAP 26.1 TRAP 26.1(a)
F.	File docketing statement with appellate court "upon perfecting the appeal"	E	TRAP 32.1
G.	File affidavit of indigence	E (or before)	TRAP 20.1(c)
H.	If not indigent, arrange to pay for clerk's record	Before record prepared	TRAP 35.3(a)
I.	Designate clerk's record[16]	Before record prepared	TRAP 34.5(b)
J.	If necessary, arrange to pay for reporter's record, file written request for reporter's record, and serve on reporter	E	TRAP 34.6(b) TRAP 35.3(b)
K.	Clerk files record in appellate court	A + 60 if MNT filed A + 120 in no MNT filed	TRAP 35.1

[14] *Caveat* – This is an abbreviated timetable. Please consult the paper for complete options.
[15] If the orders of adjudication and disposition are signed on different dates, the date the order of disposition is signed controls.
[16] This is optional. If you don't designate, the clerk's record must contain only the items mandated by TRAP 34.5(a).

L.	Reporter files record in appellate court	A + 60 if MNT filed A + 120 if no MNT filed	TRAP 35.1
M.	Appellant's brief due	K/L + 30, whichever later	TRAP 38.6(a)
N.	Appellee's brief due	M + 30	TRAP 38.6(b)
O.	Appellant's reply brief due	N + 20	TRAP 38.6(c)
P.	Court of appeals issue opinion and judgment	Promptly after submission	TRAP 43.1
Q.	File motion for rehearing or reconsideration *en banc*	P + 15	TRAP 49.1
R.	File petition for review in Supreme Court	P + 45 if no MRH or 45 days after ruling on MRH	TRAP 53.7(a)