

THE JUVENILE APPELLATE PROCESS

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Nuts and Bolts of Juvenile Law

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This paper is divided into three sections. Section I deals with the rules of appellate procedure and the sections of the Family Code which deal with juvenile appeals. I've tried to include the pertinent sections of the rules of appellate procedure which pertain specifically to juvenile appeals. Although this section is comprehensive, it is no substitute for going directly to the rules of appellate procedure and the Family Code. It is important to note that amendments were made to the Rules of Appellate Procedure in September of 2008. In addition, several amendments were made to the Family Code during the last legislative session.

The second section of the paper contains the various legal standards which the different courts' of appeals use on some of the common issues seen in juvenile cases. While not exhaustive, this section may be a good starting point for your research.

The last section contains the forms necessary to perfect a juvenile appeal and request the record.

If anyone ever has a question about juvenile appeals, please feel free to contact me.

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I. JUVENILE APPEALS IN GENERAL

A. Civil Proceedings.

Despite the fact that juvenile cases involve mostly criminal issues, appeals in most juvenile cases are governed by the rules applicable to civil appeals. This means that appeals will first go to the appropriate court of appeals and then to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(a).

B. Types of Appeals.

1. From a regular adjudication and disposition. These types of appeals will first go to the appropriate Court of Appeals (in Travis County this is the Third Court of Appeals here in Austin). If relief is sought beyond the Court of Appeals, the case goes to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(c)(1)(A) and (B).
2. From an order modifying a previous juvenile court disposition. These also go to the Court of Appeals and then to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(C).
3. From an order committing a child to a facility for the mentally ill or mentally retarded. These also go to the Court of Appeals and then to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(D).
4. From an adjudication and assessment of a determinate sentence. These also go to the Court of Appeals and then to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(c)(1)(B).
5. From a transfer hearing in a determinate sentencing case. These also go to the Court of Appeals and then to the Texas Supreme Court. V.T.C.A. Family Code, Sec. 56.01(c)(2).
6. From certification cases (transferring jurisdiction to the adult system prior to adjudication).
There is no appeal immediately after the certification. Rather the certification appeal is now part of the appeal, which will occur after the completion of the criminal case in the adult system. These appeals go first to the Court of Appeals and then to the Texas Court of Criminal Appeals.
Faisst v. State, 98 S.W.3d 226 (Tex.Cr.App. 2002) - certified juvenile may challenge the certification after an open plea in the adult criminal case.
Woods v. State, 68 S.W.3d 667 (Tex.Cr.App. 2002) - certified juvenile who plea bargains for adult punishment must comply with rules of appellate procedure and code of criminal procedure regarding notice of appeal if he wants to challenge his certification.
Rodriguez v. State, 191 S.W.3d 909 (Tex.App.-Dallas 2006, no pet.) - an appeal from a certification can only occur in conjunction with an appeal of a conviction or an order of deferred adjudication. Art. 44.47(b), V.A.C.C.P.
7. An application for writ of habeas corpus cannot be used as a substitute for appeal.
In Re Todd-Warren Altschul, 207 S.W.3d 427 (Tex.App.- Waco 2006) – Courts of Appeals have no original jurisdiction to address a collateral attack on a juvenile adjudication.
In re K.T., No. 12-03-00094-CV (Tex.App.- Tyler, March 31, 2003) - Here the juvenile tried unsuccessfully to attack the revocation of her probation and commitment to TYC.

Ex parte Valle, 104 S.W.3d 888 (Tex.Cr.App. 2003) - Juvenile committed a capital murder and was given a thirty year determinate sentence. Juvenile was committed to TYC and at age 17 ½ was transferred to the adult prison system. He filed an Art. 11.07, V.A.C.C.P., application for writ of habeas corpus. Holding: Art. 11.07 writs are not available to juveniles serving determinate sentences.

In the Matter of C.G., ____ S.W.3d ____, 2007 Tex.App.LEXIS 2548 (Tex.App.-Tyler March 30, 2007) - Courts of Appeals do not have original jurisdiction to issue writs of habeas corpus for children who have already been transferred from TYC to TDCJ.

But see Ex parte Rigoberto Rodriguez, 2008 Tex.App. LEXIS 4602 (Tex.App.-Ft. Worth 2008, pet. refused, 2008 Tex.LEXIS 950, October 10, 2008) - juvenile given determinate sentence for murder files Art. 11.07 application for writ of habeas corpus. Appellate court says while juvenile has no rights under Art. 11.07 because there is no “conviction”, court goes ahead and reviews the claim eventually denying relief.

In re Debrow, 2004 Tex.App. LEXIS 7146 (Tex.App.-San Antonio, August 11, 2004 - when mandamus and habeas can be used in juvenile cases.

8. Below are situations in which the courts have ruled that juveniles have no rights of appeal:

In the Matter of S.D.S., 2009 W.L. 839053 (Tex.App.- Amarillo, March 31, 2009, No. 07-07-0499-CV) – court of appeals was without jurisdiction to hear an order transferring a disposition to another county because the Family Code does not authorize it.

In the Matter of R.J.M., 2006 Tex.App. LEXIS 6494 (Tex.App.- San Antonio 2006, no pet.) - there is no right to appeal the denial of a motion asking the juvenile court to appoint counsel to assist in filing a post-adjudication motion for forensic DNA testing.

In the Interest of D.B., 80 S.W.3d 698 (Tex.App.-Dallas, 2002 - the juvenile’s attempt to file a pre-trial appeal was dismissed because the court of appeals had no jurisdiction to entertain a pre-trial appeal.

In the Matter of C.M.W. unpublished, 2005 Tex.App. LEXIS 1291 (Tex.App.- Ft. Worth, February 17, 2005) - a decision to transfer a determinate sentence probation from juvenile court to adult court is not appealable.

In the Matter of D.D.H., 143 S.W.3d 906 (Tex.App.- Beaumont, August 26, 2004) – only a parent ordered to pay restitution may challenge that order on appeal; the juvenile may not do so for the parent.

C. Appellate Rights of Juveniles.

V.T.C.A Family Code, Sec. 56.01(d) guarantees the following appellate rights to every juvenile:

1. the right to appeal.
2. the right to representation of counsel on appeal.

In re A.G., 195 S.W.3d 886 (Tex.App.-Waco 2006) - where retained appellate counsel withdraws, the appeal must be abated to determine if the juvenile is indigent and entitled to court-appointed counsel.

3. the right to the appointment of counsel on appeal if the juvenile is indigent.

D. Obligation of Trial Counsel in Relation to the Appeal.

If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the juvenile in juvenile court shall file a notice of appeal with the juvenile court and inform the court whether he or she will handle the appeal. If necessary, the trial court shall appoint an attorney to handle the juvenile's appeal. V.T.C.A. Family Code, Sec. 56.01(f).

In the Matter of A.M.M., 2003 Tex.App. LEXIS 3119 (Tex.App.-Beaumont, April 10, 2003) - when mother of juvenile filed notice of appeal, but nothing in the record suggested the juvenile wished to appeal, appeal was dismissed.

In the Matter of A.E.E., 89 S.W.3d 250 (Texarkana, 2002) - juvenile's father lacked standing to appeal a plea bargained disposition.

E. Obligation of the Trial Judge in Relation to the Appeal.

V.T.C.A. Family Code, Sec. 56.01(e) provides that upon entering an appealable order, the trial court must advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under V.T.C.A. Sec. 56.01(d), including his right to appeal and his right to counsel on appeal.

If the trial court is notified that the trial attorney will not be handling the appeal, the trial court must either:

- (1) appoint appellate counsel for the child, if the child is indigent. V.T.C.A. Family Code, Sec. 56.01(f); or
- (2) order the child's parents to employ counsel. V.T.C.A. Family Code, Sec. 51.10(d), (l).

F. An Appeal Does Not Suspend the Juvenile Court's Order.

An appeal does not suspend the order of the juvenile court nor does it release the child from the custody of the court, the person, the institution or the agency to whose care the child has been committed. The appellate court may issue a personal bond. V.T.C.A. Family Code, Sec. 56.01(g). In re D.W.R., 990 S.W.2d 446 (Tex.App.-San Antonio 1999, orig. proceeding); In re J.V., 944 S.W.2d 15 (Tex.App.-El Paso 1997, orig. proceeding). It is the juvenile's burden to show that it is in the best interest of the juvenile to grant a bond. In the Matter of J.G., 2004 Tex.App. LEXIS 11477 (Tex.App.-San Antonio, December 22, 2004).

G. Who May Appeal.

Generally, only the respondent child has the right to appeal from the juvenile court to the Court of Appeals. C.L.B. v. State, 567 S.W.2d 795 (Tex. 1978).

In an ordinary juvenile case, the State has no right to appeal from a dismissal resulting from a pretrial suppression order. In the Matter of F.G., 2007 Tex.App. LEXIS 4887 (Tex.App.-Corpus Christi, 2007); In the Matter of S.N., 95 S.W.3d 535 (Tex.App.-Houston [1st Dist.] 2002); In the Matter of F.C., 108 S.W.3d 384 (Tex.App.-Tyler 2003).

However, the State has the right to appeal an order which dismisses a petition or any portion of a petition, arrests or modifies a judgment, grants a new trial, sustains a claim of former jeopardy or grants a motion to suppress evidence or a confession in determinate sentencing cases under Sec. 56.03, V.T.C.A. Family Code. In the Matter of H.V., 252 S.W.3d 319 (Tex. 2008)(first case involving an interlocutory appeal by the State to make its way to the Texas Supreme Court; interesting discussion on interlocutory appeals in juvenile cases and Supreme Court jurisdiction)

If the respondent child has appealed to the Court of Appeals and received a favorable ruling, the State may petition the Texas Supreme Court for review of the decision of the Court of Appeals. At this point, the child may apply to be released on personal bond. In re D.W.R., 990 S.W.2d 446 (Tex.App.-San Antonio 1999).

****an interesting case which should get an award for creative lawyering: In re F.M., 238 S.W.3d 837 (Tex.App.-El Paso 2007, pet. denied 2008) – On Dec. 8, 1992, juvenile given a twenty year determinate sentence for agg. kidnapping and agg. sexual assault. Juvenile transferred to TDC on October 1, 1993. No appeal. Three years later, creative lawyer files a Motion to Suspend Further Execution of the Sentence/Motion to Have Sentence Reduced. On July 5, 2006, trial court reduces the sentence from twenty to fourteen years. State appeals and Ct of Appeals rules that juvenile court had no jurisdiction to alter the sentence and thus the order reducing the sentence was void.

H. Limitations on Appeal.

A child who enters a plea or agrees to a stipulation of evidence may not appeal if the court makes a disposition in accordance with the agreement between the state and the child unless (1) the trial court gives the child permission to appeal, or (2) the appeal is based on matters raised by written pretrial motion. V.T.C.A. Family Code, Sec. 54.034; V.T.C.A. Family Code, Sec. 56.01(n)(2) (West 2002). In re A.E.E., 89 S.W.3d 250 (Tex.App.-Texarkana 2002, no pet.); In re D.A.R., 73 S.W.3d 505, 508-509 (Tex.App.-El Paso 2002, no pet.); In the Matter of B.N.C., 2003 Tex.App. LEXIS 2299 (Tex.App.-San Antonio, March 19, 2003); In the Matter of D.P.M., 2004 Tex.App.LEXIS 7223 (Tex.App.- Corpus Christi, August 12, 2004)

II. INDIGENCE IN JUVENILE CASES

A. Establishing Indigence.

1. Under the Rules of Appellate Procedure, in order to establish indigence, an appellant has to file an affidavit of indigence or a certificate of indigence in accordance with Tex.R.App.Proc. 20.1. However the Texas Supreme Court has ruled that the determination of a juvenile appellant's indigence is not governed by the Rules of Appellate Procedure but rather by the Family Code. V.T.C.A. Family Code, Sec. 56.02 allows the indigence determination to be based on either (1) a hearing or (2) an affidavit "by the child's parent." In re K.C.A., 36 S.W.3d 501 (Tex. 2000); In the Matter of D.L.C., 2005 Tex.App.Lexis 9274 (Tex.App.-Amarillo, November 8, 2005)

Tex.R.App.Proc. 20.1 was amended, effective Sept. 1, 2008, to provide that the affidavit of indigence must be filed with or before the notice of appeal. "The prior filing of an affidavit of indigence in the trial court pursuant to Texas Rules of Civil Procedure 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence."

2. When determining indigence of a juvenile for purposes of an appeal, the juvenile 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. V.T.C.A. Family Code, Sec. 56.01(m).

In the Matter of A.G.N., 2007 Tex.App.LEXIS 7819 (Tex.App.-Amarillo September 28, 2007) – If a juvenile's parents are capable of retaining an attorney on appeal, but elect not to do so, the trial court can order them to pay for juvenile's counsel on appeal.

3. Failure to pay required filing fee or establish indigence warrants dismissal on appeal. In the Matter of M.A.F., 2008 Tex.App.LEXIS 1154 (Tex.App.- Amarillo, February 15, 2008)

But see: **Tex.R.App.Proc. 20.1(c)(3) now provides in part that " . . . the court may not dismiss the appeal or affirm the trial court's judgment on the ground that the**

appellant has failed to file an affidavit or a sufficient affidavit of indigence unless the court has first provided the appellant notice of the deficiency and a reasonable time to remedy it.”

III. MOTIONS FOR NEW TRIAL

A. No Longer Governed by the Texas Rules of Civil Procedure. *****

Formerly because juvenile cases were considered to be civil in nature, the Texas Rules of Civil Procedure contained the requirements for motions for new trial in juvenile cases. Tex.R.Civ.Proc. 324(b) provides that a point in a motion for new trial is a prerequisite to raising the following points 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 aside 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 incurable jury argument if not otherwise ruled on by the trial court.

*******However during this last legislative session, Sec. 56.01 of the Family Code was amended by adding Subsection (b-1) which now provides:**

“(b-1) 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.”**

This means that effective September 1, 2009, a motion for new trial in a juvenile case is to be treated just as a motion for new trial in a criminal case.

No longer is there a laundry list that must be complied with before a point of error can be raised on appeal. Tex.R.App.Proc. 21.2 simply provides that: “A motion for new trial is a prerequisite to presenting a point of error on appeal only when necessary to adduce facts not in the record.”

IV. PERFECTING THE APPEAL (REMEMBER THIS IS CONSIDERED A CIVIL APPEAL)

A. Must file notice of appeal with the trial court to perfect the appeal. Tex.R.App.Proc. 25.1(a).

B. Contents of the notice of appeal. Tex.R.App.Proc. 25.1(d).

1. identify the trial court and the case’s trial court number and style;
2. state the date of the judgment or order appealed from; *(note: in juvenile appeals this is the date the order was signed by the trial court)
3. state that the party desires to appeal;
4. state the court to which the appeal is taken;
5. state the name of each party filing the notice;

6. in an accelerated appeal, state that the appeal is accelerated.

C. Copies of the notice of appeal must be served on all parties to the case. A copy must also be filed with the clerk of the Court of Appeals. Tex.R.App.Proc. 25.1(e).

D. Time Limits.

1. Generally, notice of appeal must be filed within 30 days after the judgment is signed. Tex.R.App. Proc. 26.1. In a juvenile appeal, notice of appeal should be filed within 30 days of the date the order of disposition was signed. In re G.C.F., 42 S.W.3d 194 (Ft. Worth 2001, no pet.); In the Matter of C.W., unpublished, No 05-04-000674-CV (Tex.App.- Dallas, December 13, 2004); In the Matter of R.L., unpublished, No. 08-04-00082-CV (Tex.App.-El Paso, January 13, 2005).
2. Exception: notice of appeal must be filed within 90 days after the judgment is signed if any party files:
 - a. a motion for new trial;
 - b. a motion to modify the judgment;
 - c. a motion to reinstate under Texas Rules of Civil Procedure 165a; or
 - d. a request for findings of fact and conclusions of law. Tex.R.App.Proc. 26.1(a).
3. A party may apply for an extension of time in which to file notice of appeal if within 15 days after the deadline for filing notice of appeal, the party files:
 - a. a notice of appeal in the trial court; and
 - b. a motion for extension of time to file notice of appeal in the Court of Appeals. Tex.R.App.Proc. 26.3.
4. If a notice of appeal is prematurely filed, it is effective and deemed filed on the day that the period for perfecting the appeal begins. Tex.R.App.Proc. 27.1(a).

V. DOCKETING STATEMENT

In every appeal, after filing the notice of appeal in the trial court, appellant must file in the Court of Appeals a docketing statement. Tex.R.App.Proc. 32.1. (**The Courts of Appeals have developed a form, The Civil Docketing Statement, which is to be used. This form may be down loaded from the appellate courts' website or picked up in the clerk's office at the court of appeals.) There is no time deadline for filing the docketing statement., but the courts of appeals generally send out reminder notices to file the docketing statement.

VI. APPELLATE RECORD

A. The Clerk's Record - Prepared by the District Clerk.

Tex.R.App.Proc. 34.5(a) requires that the clerk's record contain:

1. all pleadings on which the trial was held;
2. the court's docket sheet;
3. the court's charge and the jury's 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 request 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 a court reporter's record;
9. any request for preparation of the trial clerk's record;
10. a certified bill of costs;
11. any additional items that a party asks to have included in the record.

B. Request for Clerk's Record.

1. Although not required, it is good practice to make a formal request to the court clerk to prepare a reporter's record (transcript), designating the items, which the party wants included.
2. The request may be made at any time before the clerk's record is prepared. Tex.R.App.Proc. 34.5(b)(1).

C. Filing the Clerk's Record.

1. Generally, the clerk's record is due within 60 days after the judgment is signed. However, if the appealing party has filed either a motion for new trial or a request for findings of fact or conclusions of law, the clerk's record is not due until 120 days after the judgment is signed. Tex..R.App.Proc. 35.1.
2. It is the court clerk's responsibility to file the clerk's record. Tex.R.App.Proc. 35.3(a).

D. The Reporter's Record.

The Reporter's Record is prepared by the court reporter. Tex.R.App.Proc. 34.6(a) requires that the court reporter's record contain whatever the parties designate.

E. Request for the Reporter's Record.

1. It is required that the appellant make a formal request to the court reporter, requesting him or her to prepare a transcription of the case proceedings and designating the specific proceedings and the exhibits which the party wants included. Tex.R.App.Proc. 34.6(b)(1). In a juvenile case, make sure to request the reporter to prepare a record from the specific hearings you need, i.e.: adjudication and disposition hearing, hearing on motion to modify disposition.
2. The request may be made at or before the time for perfecting the appeal and a copy of the request must be filed with the trial court clerk. Tex.R.App.Proc. 34.6(b).

F. Filing the Reporter's Record.

1. Generally, the reporter's record is due within 60 days after the judgment is signed.

However, if the appealing party has filed either a motion for new trial or a request for findings of fact or conclusions of law, the reporter's record is not due until 120 days after the judgment is signed. Tex..R.App.Proc. 35.1.

2. It is the court reporter's responsibility to file the reporter's record. Tex.R.App.Proc. 35.3(a).

G. Timely Filing of the Record.

Tex.R.App.Proc. 35.3(c) provides that the appellate court must allow the record to be filed late when the delay is not the appellant's fault.

H. Inaccuracies in the Reporter's Record.

Tex. R.App.Proc. 34.6(e) has been amended to read as follows:

“(e) Inaccuracies in the Reporter's Record.

(1) Corrections of Inaccuracies by Agreement. The parties may agree to correct an inaccuracy in the reporter's record, including an exhibit, without the court reporter's recertification.

(2) Correction of Inaccuracies by the Trial Court. If the parties cannot agree on whether or how to correct the reporter's record so that the text accurately discloses what occurred in the trial court and the exhibits are accurate, the trial court must -- after notice and hearing -- settle the dispute. After doing so, the court must order the court reporter to correct the reporter's record by conforming the text to what occurred in the trial court or by adding an accurate copy of the exhibit, and to certify and file in the appellate court a corrected reporter's record.

(3) Correction After Filing in Appellate Court. If the dispute arises after the reporter's record has been filed in the appellate court, that court may submit the dispute to the trial court for resolution. The trial court must then ensure that the reporter's record is made to conform to what occurred in the trial court.”

I. Lost or Destroyed Record

Tex.R.App.Proc. 34..6(f) has been amended to read as follows:

“(f) Reporter's Record Lost or Destroyed. An appellant is entitled to a new trial under the following circumstances:

(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) if 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.

In re E.C.D., 2007 Tex.App.-LEXIS 1270 (Tex.App.-San Antonio, 2007) – where significant portion of record from disposition hearing was lost, juvenile entitled to a new disposition hearing.

In re K.T.C., unpublished, No. 11-02-00118-CV (Tex.App.-Eastland, February 13, 2003) - Inaudible audio tape of a probation revocation hearing and parties were unable to agree on a complete record. Court of Appeals held the juvenile was entitled to a new trial under Tex.R.App.Proc. 34.6(f).

VII. MOTIONS IN THE APPELLATE COURTS

A. General Requirements.

General requirements for the contents of motions are contained in Tex.R.App.Proc. 10.1. One requirement is that in civil cases like juvenile appeals, the motion must 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 the other parties oppose the motion.

B. Number of Copies. Tex.R.App.Proc. 9.3(a)(1)(B).

A party must file an original and two copies of all motions. The Third Court of Appeals has issued a memorandum of procedures asking that as a convenience to the Court, parties file an original and three copies of all motions.

C. Motions For Extension of Time. Tex.R.App.Proc. 10.5(b).

1. Requirements for general motions for extension of time (including extensions of time to file brief) - Tex.R.App.Proc. 10.5(b)(1).
 - a. the deadline for filing the item in question;
 - b. the length of the extension sought;
 - c. the facts relied on to reasonably explain the need for an extension; and
 - d. the number of previous extensions granted regarding the item in question.
2. Requirements for motions to extend time to file notice of appeal - Tex.R.App.Proc. 10.5(b)(2).
 - a. the deadline for filing notice of appeal;
 - b. the facts relied on to reasonably explain the need for an extension;
 - c. the date of the trial court's judgment or appealable order; and
 - d. the case number and style of the case in the trial court.
3. Requirements for motions to extend time to file petition for review in the Texas Supreme Court - Tex.R.App. Proc. 10.5(b)(3).
 - a. the court of appeals;
 - b. the date of the court of appeals' judgment;
 - c. the case number and style of the case in the court of appeals; and

- d. the date every motion for rehearing or en banc reconsideration was filed, and either the date and nature of the court of appeals' ruling on the motion, or that it remains pending.

VIII. APPELLANT'S BRIEF

A. Requirements of the Contents of the Brief.

The appellant's brief must contain the following items and they must be in the following order. Tex.R.App.Proc. 38.1:

1. List the names and addresses of all parties to the trial court's order or judgment as well as the names and addresses of all trial and appellate counsel for each party;
2. A table of contents with references to the pages of the brief;
3. An alphabetical index of authorities with references to the pages of the brief where the authorities are cited;
4. A statement of the nature of the case, not exceeding ½ page and supported by record references;
5. **A statement explaining why oral argument should or should not be permitted. (effective Sept. 1, 2008.)**
6. A statement of the points of error presented for review;
7. A concise statement of the facts supported by record references;
8. A succinct, clear and accurate statement of the arguments made in the body of the brief.
9. The argument with appropriate citations to authorities and to the record.
10. A prayer for relief.
11. An appendix, which must contain:
 - a. the trial court's judgment or other appealable order from which relief is sought;
 - b. the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and
 - c. the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based, and the text of any contract or other document that is central to the argument;
 - d. any other helpful material, including cases, which might be helpful to the appellate court.

** Tex.R.App.Proc. 9.4(h) provides that an appendix should be tabbed and indexed.

*******Effective Sept. 1, 2008, Tex.R.App.Proc. 9.8 was added and now provides that the juvenile's identity must be protected in the appeal. Juvenile and his family members must be identified only by an alias, such as by initials. All documents submitted to the appellate courts must have the child and his family member's names redacted, including the pleadings contained in the appendix to the brief.**

B. Length of the Brief.

1. An appellant's original brief must be no longer than 50 pages exclusive of pages containing the identity of parties and counsel, **any statement regarding oral argument (eff. Sept. 1, 2008)**, the table of contents, the index of authorities, the statement of the case, the issues presented and the appendix. Tex.R.App.Proc. 38.4.
2. An appellant's reply brief must be no longer than 25 pages, exclusive of the items stated above. Tex.R.App.Proc. 38.4.
3. In civil cases, the total number of pages of all briefs filed by a party must not exceed 90 pages, exclusive of items listed above. Tex.R.App.Proc. 38.4.

C. Form of the Brief.

Tex.R.App.Proc. 9.4 contains explicit requirements for the actual printing and form of the brief. This includes requirements for:

1. Printing;
2. Paper type and size;
3. Margins;
4. Spacing;
5. Typeface;
6. Binding and Covering;
7. Contents of the Cover -- ** note -- if a party is requesting oral argument, that request must appear on the front cover of that party's first brief. If it does not appear, oral argument will not be granted.
8. Appendix - every appendix should be tabbed and indexed.
9. Certificate of Service - Tex.R.App.Proc. 9.5 provides that every document must contain a certificate of service showing the date and manner of service on the opposing party and the name and address of each person served.

D. Time to File Briefs.

1. Appellant's original brief must be filed within 30 days after the later of:
 - a. the date the clerk's record was filed; or
 - b. the date the reporter's record was filed. Tex.R.App.Proc. 38.6(a).
2. A brief replying to an appellee's brief must be filed within 20 days after the appellee's brief was filed. Tex.R.App.Proc. 38.6(c).
3. Extensions of time.

Tex.R.App.Proc. 38.6(d) has been amended to read as follows:

“(d) Modification of filing time. On Motion complying with Rule 10.5(b), the appellate court may extend the time for filing the 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.” (This change now allows the appellees (the State) to file for extensions of time.)

Where a defense attorney does not timely file a brief or a motion for extension of time, the court of appeals may abate the appeal and remand the case to the trial court to determine (1) if the appellant desires to prosecute the appeal, (2) if so, whether appointed appellate counsel has abandoned the appeal, (3) whether present appellate counsel should be replaced and (4) what orders need be entered to either dismiss the appeal or see that it is diligently pursued. In the Matter of Tony Gibbs, 153 S.W.3d 634 (Tex.App.-Amarillo 2004).

E. Filing Briefs.

File the original and five copies of the brief with the clerk of the Court of Appeals. Tex.R.App.Proc. 9.3(a)(1). (Some of the Courts of Appeals have local rules which require more than the original and five copies to be filed. Make sure to check the local rules for the Court of Appeals in which you are filing the brief.)

F. “Anders (Fivolous) Briefs”.

If court-appointed counsel determines that the appeal is without merit and frivolous, he or she is required to file an “Anders Brief”, stating that there are no points of error having merit. Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967); In re D.A.S., 973 S.W.2d 296, 299 (Tex. 1998); In the Matter of R.W.G., 2003 Tex.App. LEXIS 2653 (Tex.App.-Ft. Worth, March 27, 2003); In the Matter of D.L., 2004 Tex.App. LEXIS 3213 (Tex.App.-Ft. Worth, April 8, 2004); In the Matter of D.R.H., unpublished, No. 2-03-126-CV, 2004 Tex.App.Lexis 5388 (Tex.App-Ft. Worth, June 17, 2004); In the Matter of C.P.D., 2004 Tex.App.Lexis 6130 (Tex.App. - Ft. Worth, July 8, 2004); In the Matter of L.J.G., unpublished, No. 07-04-0292-CV (Tex.App.-Amarillo December 16, 2004). In re L.M., 2006 Tex.App. LEXIS 5967 (Tex.App.-San Antonio 2006, no pet.); In the Matter of L.T.P., II, 2008 Tex.App.LEXIS 5642 (Corpus Christi 2008, no pet.); In the Matter of K.M., 2008 WL 4445544 (Tex.App.-Ft. Worth, October 2, 2008, No. 2-07-389-CV)

Counsel should file a motion to withdraw accompanied by two exhibits:

(1) a separate brief containing a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced on appeal; and

(2) a letter or other documentation indicating counsel has provided the juvenile client and the juvenile’s parents or guardian a copy of the brief, has informed them of the juvenile’s right to file a pro se response to the brief and has informed them of the client’s right to review the record. In re J.A.H., 986 S.W.2d 39 (Tex.App.-Waco 1998; In the Matter of A.L.H., 974 S.W.2d 359 (Tex.App.-San Antonio 1998).

IX. ORAL ARGUMENT

A. Right to Oral Argument.

Only those parties who have filed a brief and who have timely requested oral argument will be allowed to argue. Tex.R.App.Proc. 39. 1 has been amended to provide, “ **The court may decide that oral argument is unnecessary for any of the following reasons: (a) the appeal is frivolous; (b) the dispositive issue or issues have been authoritatively decided; (c) the facts and legal arguments are adequately presented in the briefs and record; or (d) the decisional process would not be significantly aided by oral argument.**” (effective Sept. 1, 2008) A

request for oral argument must be made on the front cover of the party's brief. Tex.R.App.Proc. 39.7. **See Tex.R.App.Proc. 38.1(e) for new rule regarding a statement in the brief as to why request for oral argument should be granted. (effective Sept. 1, 2008).**

B. Time Allowed.

Each side is allowed a set time for argument with the appellant arguing first, then the State, and then the appellant closing in rebuttal. Tex.R.App.Proc. 39.3. Check the local rules of the Court of Appeals in which the appeal is pending for the time which the Court will allow for argument.

X. DISMISSAL AND SETTLEMENT

Tex.R.App.Proc. 42.1 has been amended to read as follows:

“42.1. Voluntary Dismissal and Settlement in Civil Cases.

(a) On Motion for By Agreement. The appellate court may dispose of an appeal as follows:

(1) On Motion by Appellant. In accordance with a motion of appellant, the court may dismiss the appeal or affirm the appealed judgment or order unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

In re G.Q., 2006 Tex.App. LEXIS 7618 (Tex.App.-El Paso 2006) - juvenile's notice of appeal withdrawn at juvenile's request.

(2) By Agreement. In accordance with an agreement signed by the parties or their attorneys and filed with the clerk, the court may:

(A) render judgment effectuating the parties' agreement;

(B) set aside the trial court's judgment without regard to the merits and remand the case to the trial court for rendition *of* judgment in accordance with the agreement; or

(C) abate the appeal and permit proceedings in the trial court to effectuate the agreement.

(b) Partial Disposition. A severable portion of the proceeding may be disposed of under (a) if it will not prejudice the remaining parties.

(c) Effect on Court's Opinion. In dismissing a proceeding, the appellate court will determine whether to withdraw any opinion it has already issued. An agreement or motion for dismissal cannot be conditioned on withdrawal of the opinion.

(d) Costs. Absent agreement of the parties, the court will tax costs against the appellant.

XI. JUDGMENT OF THE COURT OF APPEALS

A. Types of Judgments

Pursuant to Tex.R.App.Proc. 43.2, the Court of Appeals may

(a) affirm the trial court's judgment in whole or part;

(b) modify the trial court's judgment and affirm it as modified;

In the Matter of K.B., 106 S.W.3d 913 (Tex.App.-Dallas 2003, no pet.) - Dallas Court of Appeals corrected clerical errors in the trial court's order of disposition (wrong references to sections of the Texas Family Code.)

In the Matter of J.K.N., 115 S.W.3d 166 (Tex.App. - Ft. Worth 2003, no pet.) - Court of Appeals corrected clerical errors.

In the Matter of D.H. 2005 Tex.App. LEXIS 4919 (Tex.App.-Dallas, June 24, 2005) - Court of Appeals corrected an incorrect judgment.

(c) reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered;

(d) reverse the trial court's judgment and remand the case for further proceedings;

(e) vacate the trial court's judgment and dismiss the case; or

(f) dismiss the appeal.

B. Precedent in Transferred Cases (NEW RULE)

Tex.R.App.Proc. 41.3 was added to provide that in cases transferred from one court of appeals to another, the receiving court is to “decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court’s decision otherwise would have been inconsistent with the precedent of the transferor court.” (effective Sept. 1, 2008)

XII. REVERSIBLE ERROR

A. Different Standards Depending on the Type of Case

1. Tex.R.App.Proc. 44.1(a) contains the standard to be used in ordinary civil appeals and provides that no judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of:
 - a. probably caused the rendition of an improper judgment; or
 - b. probably prevented the appellant from properly presenting the case to the court of appeals.

Case law holds that when reviewing the dispositional phase of an indeterminate case, the appellate courts should use the civil harm analysis of Rule 44.1. In the Matter of D.V., 955 S.W.2d 379 (Tex.App.-San Antonio 1997, no writ); In re C.P., 925 S.W.2d 151,152 (Tex.App.-Austin 1996, writ denied); In re G.A.O., 854 S.W.2d 710, 716 (Tex.App.-San Antonio 1993, no writ);

2. Tex.R.App.Proc. 44.2(a) contains the standard to be used in the appeal of criminal cases and provides one standard for constitutional error and another standard for no constitutional error.

Case law holds that when reviewing the dispositional phase of a determinate sentencing proceeding, the appellate courts should use the criminal harm analysis of Rule 44.2. In re M.R.R., 929 S.W.2d 687, 689 (Tex.App.-San Antonio, no writ); In re D.Z., 869 S.W.2d 561, 565-566 (Tex.App.-Corpus Christi, 1993, writ denied).

B. Defects in Appellate Procedure. Tex.R.App.Proc. 44.3.

A court of appeals must not affirm or reverse a judgment or dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities.

C. Remediable Error in the Trial Court. Tex.R.App.Proc. 44.4.

A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:

1. the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and
2. the trial court can correct its action or failure to act.

In this situation, the Court of Appeals must remand the case back to the trial court to correct the error. Tex.R.App.Proc. 44.4(b).

XIII. OPINIONS BY THE COURTS OF APPEALS

Tex.R.App.Proc 47 now reads:

“RULE 47. OPINIONS, DISTRIBUTION, AND CITATION

47.1. Written Opinions. The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.

47.2. Designating and Signing Court Opinions; Participating Justices.

“(a) Civil and Criminal Cases. Each opinion for the court must be designated either an 'Opinion' or a 'Memorandum Opinion.' A majority of the justices who participate in considering the case must determine whether the opinion will be signed by a justice or will be per curiam and whether it will be designated an opinion or memorandum opinion. The names of the participating justices must be noted on all written opinions or orders of the court or a panel of the court . . .”

“(c) Civil Cases. Opinions and memorandum opinions in civil cases issued on or after January 1, 2003 shall not be designated 'do not publish.'

47.3. Distribution of Opinions. All opinions of the courts of appeals are open to the public and must be made available to public reporting services, print or electronic.

47.4 Memorandum Opinions. If the issues are settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it. An opinion may not be designated a memorandum opinion if the author of a concurrence or dissent opposes that designation. An opinion must be designated a memorandum opinion unless it does any of the following:

- (a) establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases.
- (b) involves issues of constitutional law or other legal issues important to the jurisprudence of Texas.
- (c) criticizes existing law; or

(d) resolves an apparent conflict of authority.

47.5 Concurring and Dissenting Opinions. Only a justice who participated in the decision of a case may file or join in an opinion concurring in or dissenting from the judgment of the court of appeals. Any justice on the court may file an opinion in connection with a denial of a hearing or rehearing en banc.

47.6 Change in Designation by En Banc Court. A court en banc may change a panel's designation of an opinion.

47.7 Citation of Unpublished Opinions. Opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited with the notation, '(not designated for publication).'

XIV. MOTIONS FOR REHEARING

A. Time for Filing.

A motion for rehearing must be filed within 15 days after the court of appeals' judgment is rendered. It must be brief and clearly state the points relied upon for rehearing. Tex.R.App.Proc. 49.1.

B. En Banc Reconsideration

“A party may file a motion for en banc reconsideration as a separate motion, with or without filing a motion for rehearing. The motion must be filed with 15 days after the court of appeals' judgment or order, or when permitted within 15 day after the court of appeals' denial of the party's last timely filed motion for rehearing or en banc consideration. . . .”
(effective Sept. 1, 2008)

C. Motion for Extension of Time.

A party may file a motion for extension of time in which to file a motion for rehearing or en banc reconsideration. The motion should be in compliance with Rule 10.5(b) and must be filed no later than 15 days after the last date for filing the motion for rehearing. Tex.R.App.Proc. 49.8.

D. Motion for Rehearing is Not a Prerequisite For Filing a Petition for Review in the Texas Supreme Court. Tex.R.App.Proc. 49.9.

XV. PETITIONS FOR REVIEW IN THE TEXAS SUPREME COURT

A. Review by the Texas Supreme Court.

The Texas Supreme Court may review a final judgment of a court of appeals on a petition for review addressed to “The Supreme Court of Texas.” Tex.R.App.Proc. 53.1

B. Contents of the Petition for Review.

Tex.R.App.Proc. 53.2 provides that the petition for review must contain the following items:

1. the identity of the parties to the trial court's final judgment and the names and addresses of all trial and appellate counsel. Tex.R.App.Proc. 53.2(a).
2. a table of contents. Tex.R.App.Proc. 53.2(b).
3. an index of authorities. Tex.R.App.Proc. 53.2(c).

4. a statement of the case containing the following:
 - a. a concise description of the nature of the case;
 - b. the name of the judge who signed the order or judgment appealed from;
 - c. the designation of the trial court and the county in which it is located;
 - d. the disposition of the case by the trial court;
 - e. the district of the court of appeals’
 - f. the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
 - g. the citation for the court of appeals opinion;
 - h. the disposition of the case by the court of appeals including any motions for rehearing or en banc reconsideration; and
 - i. an affirmation that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. Tex.R.App.Proc. 53.2(d).
5. a statement of the Supreme Court’s jurisdiction. Tex.R.App.Proc. 53.2(e).
6. a concise statement of all the issues presented for review. Tex.R.App.Proc. 53.2(f).
7. a concise statement of the facts pertinent to the issues presented. Tex.R.App.Proc. 53.3(g).
8. a summary of the arguments contained in the petition. Tex.R.App.Proc. 53.3(h).
9. a clear and concise argument containing, among other things, reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Tex.R.App.Proc. 56.1(a). Tex.R.App.Proc. 53.3(i).
10. a prayer that clearly states the nature of the relief sought. Tex.R.App.Proc. 53.3(j).
11. an appendix containing the:
 - a. the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;
 - b. the jury charge and verdict, if any, or the trial court’s findings of fact and conclusions of law, if any;
 - c. the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based, and the text of any contract or other document that is central to the argument; and
 - d. any other item pertinent to the issues presented for review. Tex.R.App.Proc. 53.3(k).

C. Affidavit of Indigence.

When filing a petition for review or responding to a State's petition for review in the Texas Supreme Court, an indigent respondent is required to file an affidavit of indigence with the clerk of the Supreme Court or else pay the filing fees for the pleading. Tex.R.App.Proc. 20.1(c)(2).

D. Response to the Petition for Review.

The filing of a response to the petition for review is not mandatory. If a response is filed, it should conform to the directives contained in this section. Tex.R.App.Proc. 53.3.

A response to a petition for review must be filed with the Supreme Court clerk within 30 days after the petition is filed. Tex.R.App.Proc. 53.7(d).

E. Petitioner's Reply to the Response.

A petitioner may file a reply addressing any matter in the response.

A reply must be filed with the Supreme Court clerk within 15 days after the response is filed. Tex.R.App.Proc. 53.7(e).

F. Length of Petition, Response and Reply.

The petition and any response must be no longer than 15 pages each, exclusive of pages containing 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, and the appendix. A reply should be no longer than 8 pages, exclusive of the items stated above. Tex.R.App.Proc. 53.6.

G. Time and Place of Filing. Tex.R.App.Proc. 53.7.

The petition must be filed with the Supreme Court clerk within 45 days after the following:

1. the date the court of appeals rendered judgment, if no motion for rehearing or en banc reconsideration is timely filed; or
2. the date of the court of appeals' last ruling on all timely filed motions for rehearing or en banc reconsideration.

H. Extension of Time. Tex.R.App.Proc. 53.7(f).

The Supreme Court may extend the time to file a petition for review if a party files a motion complying with Rule 10.5(b) no later than 15 days after the last date for filing the petition. **Effective Sept. 1, 2008, Tex.R.App.Proc. 9.3(b) was amended to require that an original and two copies of the motion for extension of time must be filed in the Supreme Court.**

I. Petitioner's Brief on the Merits. Tex.R.App.Proc. 55.

1. Tex.R.App.Proc. 55.1 has been amended to read as follows:

“55.1 Request by Court. A brief on the merits must not be filed unless requested by the Court. With or without granting the petition for review, the Court may request the parties to file briefs on the merits. In appropriate cases, the Court may realign parties and direct that parties file consolidated briefs.

2. Tex.R.App.Proc. 55.2 provides that the Petitioner's brief should include the following:

- a. a complete listing of all parties to the trial court's judgment and the names and addresses of all trial and appellate counsel;
- b. a table of contents;
- c. an alphabetically arranged index of authorities;
- d. a concise statement of the case including;
 - (1) a description of the nature of the case;
 - (2) the name of the judge who signed the order or judgment appealed from;
 - (3) the designation of the trial court and the county in which it is located;
 - (4) the disposition of the case by the trial court;
 - (5) the district of the court of appeals;
 - (6) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
 - (7) the citation for the court of appeals' opinion if available, or a statement that the opinion was unpublished;
 - (8) the disposition of the case by the court of appeals; and
 - (9) an affirmation that the court of appeals correctly stated the nature of the case, except in any particulars pointed out.
- e. a statement of the Supreme Court's jurisdiction;
- f. a concise statement of the issues or points presented for review;
- g. a concise statement of the facts supported by record references;
- h. a summary of the arguments made in the brief;
- i. the argument;
- j. the prayer.

3. Generally, a brief on the merits should not exceed 50 pages. Tex.R.App.Proc. 55.6.

J. The Respondent's Brief. Tex.R.App.Proc. 55.3.

If the petitioner files a brief on the merits, any other party may file a brief in response. A brief in response should generally not exceed 50 pages. Tex.R.App.Proc. 55.6.

K. The Petitioner's Brief in Reply. Tex.R.App.Proc. 55.4.

A petitioner may file a brief responding to the respondent's brief. Generally a reply brief must not exceed 25 pages. Tex.R.App.Proc. 55.6.

L. Time and Place of Filing. Tex.R.App.Proc. 55.7.

All briefs must be filed with the clerk of the Supreme Court on the date stated in the clerk's notice requesting the brief. If no date is stated in the notice, the petitioner's brief must be filed with 30 days of the date of the notice; the respondent's brief is due within 20 days after receiving the petitioner's brief. Reply briefs are due within 15 days after receiving the respondent's brief. The parties may apply for extensions of time in which to file the brief by filing a motion in compliance with Tex.R.App.Proc. 10.5(b).

M. Orders on Petitions for Review. Tex.R.App.Proc. 56.1

1. Considerations in granting review.

Granting review is a matter of judicial discretion. Factors in the Supreme Court's decision include:

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

2. Petition denied or dismissed. Tex.R.App.Proc. 56.1(b).

When the petition has been on file in the Supreme Court for 30 days, the Court may deny or dismiss the petition with one of the following notations:

- a. "*Denied.*" - this means the Supreme Court is not satisfied that the opinion of the court of appeals has correctly declared the law in all respects, but determines that the petition presents no error that requires reversal or that is of such importance to the jurisprudence of the state as to require correction.
- b. "*Dismissed w.o.j.*" - this means the Court lacks jurisdiction and is dismissing for want of jurisdiction.

3. Petition refused. Tex.R.App.Proc. 56.1(c).

If the Court determines that the court of appeals' judgment is correct and that the legal principles announced in the opinion are likewise correct, the Court will refuse the petition with the notation, "Refused."

** note: In a case where the petition has been refused, the opinion of the Court of Appeals has the same precedential value as an opinion of the Texas Supreme Court.

4. Settled cases.

Tex.R.App.Proc 56.3 has been amended to read as follows:

“56.3. Settled Cases. If a case is settled by agreement of the parties and the parties so move, the Supreme Court may grant the petition if it has not already been granted and, without hearing argument or considering the merits, render a judgment to effectuate the agreement. The Supreme Court’s action may include setting aside the judgment of the court of appeals or the trial court without regard to the merits and remanding the case to the trial court for rendition of a judgment in accordance with the agreement. The Supreme Court may abate the case until the lower court’s proceedings to effectuate the agreement are complete. A severable portion of the proceeding may be disposed of if it will not prejudice the remaining parties. In any event, the Supreme Court’s order does not vacate the court of appeals’ opinion unless the order specifically provides otherwise. An agreement or motion cannot be conditioned on vacating the court of appeals’ opinion.

N. Reversible Error. Tex.R.App.Proc. 61.

1. The Standard For Reversible Error.

No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the Supreme Court concludes that the error:

- a. probably caused the rendition of an improper judgment; or
- b. probably prevented the petitioner from properly presenting the case to the appellate courts;

O. Opinions of the Supreme Court. Tex.R.App.Proc. 63.

The Supreme Court will hand down a written opinion in all cases in which it renders a judgment.

P. Motions For Rehearing. Tex.R.App.Proc. 64.

1. Time for Filing. Tex.R.App.Proc. 64.1

A motion for rehearing must be filed within 15 days from the date when the Court renders judgment or makes an order disposing of a petition for review.

2. Response. Tex.R.App.Proc. 64.3.

No response to a motion for rehearing need be filed unless the court so requests.

3. Second Motions for Rehearing. Tex.R.App.Proc. 64.4.

The Court will not consider a second motion for rehearing unless the Court modifies its judgment, vacates its judgment and renders a new judgment, or issues a different opinion.

APPELLATE STANDARDS IN JUVENILE CASES

I. SUFFICIENCY OF EVIDENCE STANDARDS

A. For Adjudication Phase of Juvenile Case

The Courts of Appeal generally use the criminal standards of review for both legal and factual sufficiency. In re J.D.P., 85 S.W.3d 420 (Ft. Worth 2002, no pet.); In re J.L.H., 58 S.W.3d 242, 245 (Tex.App.-El Paso 2001, no pet.); In re G.A.T., 16 S.W.3d 818, 828 (Tex.App.-Houston [14th Dist.] 2000, pet. denied); In re L.R., 67 S.W.3d 332 (Tex.App.-El Paso 2001, no pet.); In the Matter of M.C.L., 110 S.W.2d 591 (Tex.App.-Austin 2003, no pet.); In the Matter of K.B., 143 S.W.3d 194 (Tex.App.-Waco 2004, no pet.); In the Matter of D.H., 2005 Tex.App. LEXIS 4919 (Tex.App.-Dallas, June 24, 2005).

But in an unpublished opinion, In the Matter of O.J.H., No. 11-02-00210-CV (Tex.App.-Eastland, March 20, 2003), the Court of Appeals applied the civil standard.

B. For Disposition Phase of Juvenile Cases

The Courts of Appeal tend to apply the civil standards of review for both legal and factual sufficiency. In re J.D.P., 85 S.W.3d 420 (Ft. Worth 2002, no pet.); In re A.S., 954 S.W.2d 855 (Tex.App.-El Paso 1997, no writ); In re K.L.C., 972 S.W.2d 203, 206 (Tex.App.-Beaumont, 1998, no writ); In re L.R., 67 S.W.3d 332 (Tex.App.-El Paso 2001, no pet.); In the Matter of H.R.C., 153 S.W.3d 266 (Tex.App.-El Paso, 2004)

But two courts of appeals have used the criminal standard of review. In the Matter of C.F., 2005 Tex.App. LEXIS 4905 (Tex.App.-Austin, June 23, 2005); In re C.J.H., 79 S.W.3d 698 (Tex.App.-Ft. Worth 2002, no pet.); In re C.C., 13 S.W.3d 854, 858 (Tex.App.-Austin 2000, no pet.)

The San Antonio Court of Appeals and Dallas Court of Appeals use a criminal abuse of discretion standard. The San Antonio Court of Appeals has written: In reviewing the trial court's juvenile disposition order, the appellate court applies an abuse of discretion standard, divorced from evidentiary standards of legal and factual sufficiency. The abuse of discretion standard requires that the court view the evidence in the light most favorable to the trial court's ruling, affording almost total deference to findings of historical fact that are supported by the record. However, when the resolution of the factual issue does not turn upon an evaluation of credibility or demeanor, the court reviews the trial court's determination of the applicable law, as well as its application of the appropriate law to the facts it has found, de novo. In the Matter of J.G., 195 S.W.3d 131 (Tex.App.-San Antonio 2006, no pet.); In re K.T., 107 S.W.3d 65 (Tex.App.-San Antonio 2003, no pet.); In the Matter of A.W., 147 S.W.3d 8153 (Tex.App.-San Antonio 2004, no pet.); In the Matter of M.J.A., 155 S.W.3d 575 (Tex.App.-San Antonio 2005); In the Matter of E.T., 2004 Tex.App. LEXIS 9929 (Tex.App.-San Antonio 2004); In the Matter of K.W., 2005 Tex.App. LEXIS 2882 (Tex.App.-Dallas, April 15, 2005).

II. STANDARDS FOR REVIEWING MOTIONS TO SUPPRESS

A decision on a motion to suppress is reviewed for an abuse of discretion. In re R.J.H., 79 S.W.3d 1, 7 (Tex. 2002); In re U.P., 55 S.W.3d 25, 30 (Tex.App. - Austin 2001, pet. den.); In the Matter of K.C.B., 141 S.W.3d 303 (Tex.App.-Austin 2004, no pet.)

The appellate courts use a bifurcated standard of review, giving almost total deference to the trial court's findings of fact, but conducting a de novo review of the court's applications of law to the facts. In the Matter of E.P., 257 S.W.3d 523 (Tex.App.-Dallas 2008, no pet.); In re D.G., 96 S.W.3d 465, 467 (Tex.App.-Austin 2000); In the Matter of R.E.A., unpublished, 03-04-00028-CV, (Tex.App.-

Austin, December 2, 2004)

When there is no factual dispute, the appellate courts review questions of credibility and demeanor de novo. In re U.P., 55 S.W.3d 25, 30 (Tex.App.- Austin 2001, pet. den.)

III. STANDARDS FOR DENIAL OF A MOTION TO QUASH (SPECIAL EXCEPTIONS)

When reviewing a juvenile court's denial of a motion to quash, appellate courts use an abuse of discretion standard. In re B.P.H., 83 S.W.3d 400, 405 (Tex.App.-Ft. Worth 2002, no pet.)

IV. STANDARDS FOR JURY CHARGE ERROR

Some courts of appeal have applied the Almanza v. State, 686 S.W.2d 157 (Tex.Cr.App. 1985) criminal test to jury charge issues raised in juvenile delinquency appeals. In re E.F., 986 S.W.2d 806, 810 (Tex.App.-Austin 1999, pet. den.); In re K.W.G., 953 S.W.3d 483, 488 (Tex.App.-Texarkana 1997, pet. den.)

However, the Waco Court of Appeals has held that Almanza does not apply in juvenile cases. Rather the Court held that the standards set out in the Rules of Civil Procedure should be applied. In the Matter of A.A.B., 110 S.W.3d 553 (Tex.App.-Waco 2003, no pet.) Under Rules 272 and 278 of the Texas Rules of Civil Procedure, the complainant must object or proffer a written request to preserve error. If no objection is made, reversal of the case for jury charge error will occur only if the error is fundamental, i.e. "when it 'directly and adversely affects the interest of the public generally, that interest is declared in the statutes or state's Constitution.'"

V. STANDARD FOR MODIFICATION OF A JUVENILE DISPOSITION

Orders modifying a juvenile disposition are reviewed under an abuse of discretion standard. In the Matter of D.G., 2006 Tex.App. LEXIS 2692 (Tex.App.-San Antonio, April 5, 2006); In re D.S.S., 72 S.W.3d 725, 727 (Tex.App.-Waco 2002, no pet.); In the Matter of A.R.D., 100 S.W.3d 649 (Tex.App.-Dallas 2003, no pet.); In the Matter of S.G., 2005 Tex.App. LEXIS 2560 (Tex.App.-San Antonio 2005)

An order modifying a juvenile disposition and placing a child in a secure facility is not subject to the requirements of V.T.C.A. Family Code Sec. 54.04(n). The trial court must just comply with Sec. 54.05. In re E.G., 2006 Tex.App. LEXIS 6701 (Tex.App.-Austin 2006).

VI. STANDARD FOR TRIAL COURT'S REFUSAL TO EXCLUDE WITNESS'S TESTIMONY

The trial court's refusal to exclude a witness's testimony is reviewed under an abuse of discretion standard. In the Matter of J.G., 112 S.W.3d 256 (Tex.App.-Corpus Christi, 2003, no pet.)

VII. STANDARD FOR LIMITING THE LENGTH OF CLOSING ARGUMENT

In holding the trial court abused its discretion in restricting the length of closing arguments to 20 minutes, the court found the abuse was not harmless. Dang v. State, 202 S.W.3d 278 (Tex.App.-Houston [14th] 2006)

VIII. PRESERVING ERROR

In order to preserve a complaint for appellate review, a party must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling he desires the court to make. Tex.R.App.Proc. 33.1(a); In the Matter of M.A., unpublished, No. 08-02-00544-CV, 2004 Tex.App. Lexis 5172, (Tex.App.-El Paso 6/10/04); In the Matter of D.O., 226 S.W.3d 483 (Tex.App.-Houston [1st] 2006); Rangel v. State, 2009 WL 540780 (Tex.App.-Waco, March 4, 2009, No. 10-07-00247-CR)

In the Matter of R.D.P., 2008 Tex.App. LEXIS 6833 (Tex.App.-Amarillo 2008, no pet) – appeal where juvenile is arguing that social history report should not have been admitted into evidence. Holding: no error preserved when during the disposition hearing when State offered the social history report prepared by the juvenile probation officer, defense attorney said “no objection.”

In the Matter of J.C.L., 2008 WL 4742006 (Tex.App.-Corpus Christi, October 30, 2008, No. 13-08-379-CV) – Complaint that a TYC commitment is unjustified, unreasonable, inappropriate and disproportionate to the seriousness of the alleged violation of probation, is waived if not made either at the time of the hearing or by any post-trial motion.

In Tatum v. State, 2002 Tex.App.LEXIS 2078 (Tex.App.-Tyler 3/11/02), the Court of Appeals held that failure to object or to file a motion for new trial waived the claim that the trial judge was biased in modification proceedings.

Failure to present certain due process complaints at trial waives them. In the Matter of C.S., 198 S.W.3d 855 (Tex.App.-Dallas [5th] 2006).

Failure to raise jurisdictional objections prior to a plea of guilty waives them for appeal. Mays v. State, 2005 Tex.App.LEXIS 3842 (Tex.App.-Houston [1st] 5/19/05).

Failure to raise the constitutionality of the determinate sentence transfer statute “as applied” to this particular child waives the issue on appeal. In order to review an attack on the constitutionality of a statute “as applied”, the individual must have raised the issue in the trial court. In the Matter of E.V., 225 S.W.3d 231 (Tex.App.-El Paso 2006).

IX. STANDARD FOR TRANSFERRING CHILD FROM TYC TO TDCJ - INSTITUTIONAL DIVISION

In reviewing the trial court’s decision to transfer a child from the custody of TYC to TDCJ, appellate courts use an abuse of discretion standard. In the Matter of D.T., 217 S.W.3d 741 (Tex.App.-Dallas 2007); In the Matter of J.L.C., 160 S.W.3d 312 (Tex.App.-Dallas 2005); In the Matter of J.D.P., 149 S.W.3d 790 (Tex.App.-Ft. Worth 2004, no pet.); In the Matter of J.M.O., 980 S.W.2d 811 (Tex.App.-San Antonio 1998, pet. denied); In re T.D.H., 971 S.W.2d 606 (Tex.App.-Dallas 1998, no pet.)

X. STANDARD FOR APPEALING ORDER REQUIRING CHILD TO REGISTER AS A SEX OFFENDER

Courts apply an abuse of discretion standard in reviewing a trial court’s order requiring a juvenile to register as a sex offender. In the Matter of J.D.G., 141 S.W.3d 319 (Tex.App.-Corpus Christi 2004, no pet.)

XI. APPEALS FROM AN ORDER REGARDING SEX OFFENDER REGISTRATION FOR A JUVENILE

Art. 62.357 of the Code of Criminal Procedure now provides:

“(a) Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Article 62.352(a) exempting a respondent from registration under this chapter, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration under this chapter. The appeal is limited to review of the order exempting the respondent from registration under this chapter and may not include any other issues in the case.

“(b) A respondent may under Section 56.01, Family Code, appeal a juvenile court’s order under Article 62.352(a) requiring registration in the same manner as the appeal of any other legal issue in the case. The standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in requiring registration.”

XII. STANDARD FOR ADMITTING SCIENTIFIC EVIDENCE IN JUVENILE CASES

Even though appeals of juvenile court orders are generally treated as civil cases, the criminal standard for the admission of scientific evidence should apply in light of the quasi-criminal nature of juvenile proceedings. Thus evidence of drug test was inadmissible when testifying officer could not explain the scientific theory behind the test. In the Matter of D.W.P., 2008 Tex. App. LEXIS 56 (Tex.App.-Texarkana, delivered January 4, 2008, no pet.)

XIII. WRITS OF MANDAMUS

When a trial court has a duty to follow a plea bargain agreement and fails to do so, mandamus is the appropriate remedy. Thus where the trial court accepted the juvenile's plea bargain agreement and placed the juvenile on probation and then days later rescinded its approval of the plea bargain, allowed the juvenile to withdraw his plea and reinstated the cases on the jury docket, the appellate court granted the juvenile's writ of mandamus and ordered the trial court (1) to reinstate the order placing the juvenile on probation and (2) remove the case from the trial docket. In re J.H., 2007 Tex.App.LEXIS 3927 (Tex.App.-San Antonio, 5/23/07).

NO. JV-1000

IN RE J.V.

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IN THE 98TH DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

RESPONDENT'S MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, J.V., Respondent, in the above-styled and numbered cause, by and through his undersigned court appointed counsel, and pursuant to Tex.R.Civ.Pro. Rule 324(b), files this his Motion for New Trial, and would respectfully show the Court the following:

I.

Respondent was adjudicated and found to have engaged in delinquent conduct by committing one count of sexual assault of a child. After a disposition hearing, Respondent was committed to the Texas Youth Commission on an indeterminate sentence.

II.

The judgment of adjudication and the decision as to the disposition is contrary to the law and the evidence.

WHEREFORE, PREMISES CONSIDERED, Respondent J. V. respectfully prays that this Honorable Court set this Motion for New Trial for a hearing, and after said hearing, Respondent prays this Honorable Court will grant Respondent a new trial in this cause.

Respectfully Submitted,

LINDA ICENHAUER-RAMIREZ
1103 Nueces Street
Austin, Texas 78701
(512) 477-7991
FAX #: (512) 477-3580
SBN: 10382944

COUNSEL FOR RESPONDENT
ON APPEAL

VERIFICATION

STATE OF TEXAS

COUNTY OF TEXAS

BEFORE ME, the undersigned authority on this day personally appeared Linda Icenhauer-Ramirez, who being duly sworn has deposed and stated upon her oath:

My name is Linda Icenhauer-Ramirez. I am the court appointed attorney for J.V. on appeal. I have read the above and foregoing Respondent's Motion for New Trial, and the facts contained there are true and correct.

LINDA ICENHAUER-RAMIREZ

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the _____ day of _____, 2009, to certify which, witness my hand and official seal of office.

NOTARY PUBLIC, STATE OF TEXAS

CERTIFICATE OF SERVICE

I, Linda Icenhauer-Ramirez, hereby certify that a true and correct copy of the foregoing RESPONDENT'S MOTION FOR NEW TRIAL was mailed to the Travis County District Attorney's Office on this the ____ day of _____, 2009.

LINDA ICENHAUER-RAMIREZ

No. JV-1000

IN RE J.V.

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IN THE 98TH DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

ORDER

On this the ____ day of _____, 2009, came on to be heard Respondent's Motion for New Trial, and it appears to the Court that the Motion should be GRANTED/DENIED.

JUDGE PRESIDING

JV-1000

IN RE J.V.

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IN THE 98TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

WRITTEN NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Respondent J.V., in the above-styled and numbered cause, by and through his undersigned counsel on this the ____ of _____, 2009, and pursuant to Tex. R. App. Pro. Rule 25.1 gives notice of appeal to the Court of Appeals for the Third Supreme Judicial District in Austin, Texas.

On _____, 2009, the Court held a hearing on the State’s Original Petition Alleging Delinquent Conduct. After hearing the evidence and the argument of the parties, the Court adjudicated appellant. A disposition hearing was held on _____, 2009. On that day, appellant was committed to the Texas Youth Commission. The Judgment of Adjudication and Order of Disposition was signed on _____, 2009. This notice is given within thirty (30) days after the date the Judgment of Adjudication and Order of Disposition was signed.

WHEREFORE, PREMISES CONSIDERED, Respondent prays this notice of appeal be entered of record this date.

Respectfully Submitted,

LINDA ICENHAUER-RAMIREZ
Attorney at Law
1103 Nueces Street
Austin, Texas 78701
(512) 477-7991
FAX #: (512) 477-3580
SBN: 10382944

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify, that a true and correct copy of the foregoing Written Notice of Appeal was hand-delivered to the Travis County District Attorney’s Office on this ____ day of _____, 2009.

LINDA ICENHAUER-RAMIREZ

CAUSE NO. JV-1000

IN RE JV

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IN THE 98TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

**RESPONDENT'S AFFIDAVIT OF INABILITY TO GIVE
SECURITY FOR COSTS ON APPEAL**

Before me, the undersigned authority, on this day personally appeared Respondent J.V., who after being duly sworn stated:

1. My name is J.V. and I am the Respondent in the above styled and numbered cause. I have given written Notice of Appeal to the Court of Appeals for the Third Supreme Judicial District in the above-referenced matter and desire to appeal this cause.
2. I am indigent in that I have no money, property or assets of any kind sufficient to enable me to pay for or give security for the Record on appeal.
3. My current income from employment is \$0.
4. I am not married.
5. I have no dependents.
6. I am unable to obtain a loan to cover the costs on appeal.
7. The court has previously appointed my counsel as a result of my indigence.

J.V., Respondent

"I, J.V., being presently incarcerated in the Ayres House, a part of the Texas Youth Commission, declare under penalty of perjury that the foregoing is true and correct. Executed on this the ____ day of _____, 2009."

J.V., Respondent

NO. JV-1000

§ IN THE 98TH DISTRICT COURT

IN RE J.V.

§ OF TRAVIS COUNTY, TEXAS

§ SITTING AS THE JUVENILE COURT

DESIGNATION OF MATERIAL FOR THE RECORD ON APPEAL

COMES NOW the Respondent in the above-styled and numbered cause and files this his Designation of Material for the Record on Appeal, and requests that the Clerk of this Honorable Court make and prepare as part of the record in the appeal of this cause true and correct copies of all documents contained in the case file in this cause including the following instruments:

Original Petition Alleging Delinquent Conduct

Respondent's Request to the State for Notice of Extraneous Offense

Motion for Discovery and Inspection of Evidence

Respondent's Motion for Disclosure of Rule 702 Witnesses And Any Facts or Data Relied Upon By Said Witnesses

Notice of Outcry Statement

State subpoenas

State's Notice of Expert Witnesses

Judgment of Adjudication

Dispositional Order of Probation

Receipt of Exhibits

Application For Court - Appointed Attorney

Motion For New Trial

Notice of Appeal

Docket Sheet

Designation of Material for Record on Appeal

Designation of Evidence on Appeal

Respectfully Submitted,

LINDA ICENHAUER-RAMIREZ
Attorney at Law.
1103 Nueces Street
Austin, Texas 78701
(512) 477-7991
FAX #: (512) 477-3580
SBN: 10382944

ATTORNEY FOR APPELLANT
ON APPEAL

CERTIFICATE OF SERVICE

I hereby certify, that a true and correct copy of the foregoing Designation of Material for the Record on Appeal was hand-delivered to the Travis County District Attorney's Office on this the ____ day of _____, 2009.

LINDA ICENHAUER-RAMIREZ

NO. JV-1000

IN RE J.V.

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IN THE 98TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

DESIGNATION OF EVIDENCE ON APPEAL

COMES NOW the Respondent in the above-styled and numbered cause and files this his Designation of Evidence on Appeal, pursuant to Tex. R. App. Pro. 34.6(b) and requests that the Court Reporter of this Honorable Court make and prepare as part of the record in the appeal of this cause true and correct copies of the following matters in this cause:

1. A transcription of the opening statements, if any, made by counsel for the State and counsel for the Respondent.
2. The testimony of all witnesses during all pre-trial hearings in this cause.
3. The testimony of all witnesses during the trial of this cause.
4. All communications between the trial court and the Respondent, counsel for the Respondent, and counsel for the State.
5. All arguments of counsel for the State and counsel for the Respondent during the adjudication hearing and the disposition hearing.
6. The decision of the trial court during the adjudication hearing.
7. The decision of the trial court during the disposition hearing.
8. All exhibits admitted into evidence during the pretrial hearings and trial in this cause.
9. The hearing on the Respondent's Motion for New Trial.

WHEREFORE, PREMISES CONSIDERED, the Respondent respectfully prays that the Court Reporter of this court make and prepare as part of the record in this cause on appeal, a true and correct copy of the foregoing matters.

Respectfully Submitted,

LINDA ICENHAUER-RAMIREZ
Attorney at Law
1103 Nueces Street
Austin, Texas 78701
(512) 477-7991
FAX #: (512) 477-3580
SBN: 10382944

ATTORNEY FOR APPELLANT
ON APPEAL

CERTIFICATE OF SERVICE

I hereby certify, that a true and correct copy of the foregoing Designation of Evidence was hand-delivered to the Travis County District Attorney's Office and hand-delivered to the official court reporter of the 98TH District Court on this the ____ day of _____, 2009.

LINDA ICENHAUER-RAMIREZ

JV-1000

IN RE J.V.

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IN THE 98TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

MOTION FOR REPORTER’S RECORD AT NO COST TO RESPONDENT

Comes Now, J.V., Respondent in the above entitled and numbered cause, and requests the Court to allow Respondent to obtain a transcript of the testimony at the adjudication hearing and disposition hearing, and in support of this motion would show the Court as follows:

I.

Respondent is indigent and unable to pay for a transcription of the testimony on her own.

II.

The testimony at the adjudication hearing and disposition hearing is material for Respondent to brief the issues for appeal in this cause.

Wherefore, Premises Considered, Respondent requests, that she be allowed to obtain a written transcription of the adjudication hearing and disposition hearing, and that the cost of obtaining the transcription be charged to the General Funds of Travis County, Texas.

Respectfully submitted,

LINDA ICENHAUER-RAMIREZ
Attorney at Law
1103 Nueces Street
Austin, Texas 78701
(512) 477-7991
FAX #: (512) 477-3580
SBN: 10382944

CERTIFICATE OF SERVICE

I, Linda Icenhauer-Ramirez, certify that a true and correct copy of the foregoing has been served upon the office of the District Attorney for the Travis County Juvenile Court and the official court reporter for the 98th District Court this the ____ day of _____, 2009.

LINDA ICENHAUER-RAMIREZ

JV-1000

IN RE J. V.

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IN THE 98TH DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
SITTING AS THE JUVENILE COURT

ORDER

On this day, came to be considered the foregoing Motion for Reporter's Record at No Cost to Respondent and after hearing, the Court having considered the motion it is therefore ordered that the aforesaid motion is hereby GRANTED/DENIED.

IT IS THEREFORE ORDERED that the court reporter for the 98th District Court of Travis County, Texas prepare the transcript of the testimony of the adjudication hearing and disposition hearing.

IT IS FURTHER ORDERED that the cost of obtaining this transcript be charged to the General Fund of Travis County.

SIGNED AND RENDERED this _____ day of _____, 2009.

PRESIDING JUDGE

SIGNED AND RECOMMENDED the _____ day of _____, 2009.

Juvenile Court Referee