

**TRAVELING TO A FOREIGN DESTINATION:  
TRANSITIONING FROM TRIAL TO YOUR FIRST APPEAL**

**YOLANDA CORTÉS MARES, *Temple***  
Attorney at Law

State Bar of Texas  
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**CHAPTER 51**





## **Yolanda Cortés Mares**

### **Attorney At Law**

2106 Bird Creek Drive, Temple, TX 76502

Tel: (254) 771-1412

Fax: (254) 771-2082

E-mail: ymares@earthlink.net

### **University of Houston Law Center, Doctor of Jurisprudence**

(1983 - 1988)

### **Cornell University, Bachelor of Architecture**

(1975 - 1980)

#### **Current**

##### **•Yolanda Cortes Mares, Attorney At Law, (1992-Present)**

A solo practitioner in Bell County, Texas, currently primarily concentrating on Child Welfare Law cases either representing parents or as the court appointed Guardian Ad Litem or Attorney Ad Litem for children.

#### **Previous**

##### **•Andrews, Myers & Donaldson, PC, Houston, TX, Attorney (1990-1992)**

##### **•Presiding Judge, City of Kempner (2005-2018) – part time**

## **Professional Licenses**

##### **•Attorney and Counselor at Law, State of Texas (licensed November, 1989)**

##### **•Licensed Architect, State of Texas**

## **Languages**

##### **•Spanish - Native or bilingual proficiency (oral and written)**

## **Professional Organizations**

##### **•Immediate Past State Bar of Texas District 8 Director (2019-2022)**

2020-2021 Advisor to Child Protection Law Section

2020-2021 Advisor to PJC – Family & Probate Committee

2020-2021 Alternate Advisor to Women In The Profession Committee

2021-2022 Alternate Advisor to PJC- Justice of the Peace Court Section

Discipline & Client Attorney Assistance Committee

Client Security Fund Committee

2021-2022 Policy Manual Sub-Committee

2022 Ad Hoc Committee to Select At-Large Directors

2021-2022 Texas Lawyers Assistance Program (TLAP) Committee –

Cognitive/Special Population Subcommittee

##### **•Treasurer-Elect, SBOT Child Protection Law Section (CPLS) (2023-2024)**

##### **•Member, SBOT Child Protection Law Section (CPLS) Multiculturalism Committee**

##### **•Member, SBOT MCLE Committee (2023-2025)**

##### **•Member, SBOT Building Planning Special Committee (2021-Present)**

##### **•Member, Bell County Bar Association**

##### **•Past President, Bell County Women's Bar Association**

##### **•Sustaining Life Fellow, Texas Bar Foundation**

## Appeals

- E.T.-M vs. Texas Department of Family and Protective Services*, 03-18-00622-CV, Child Custody – accelerated
- B.L. vs. Texas Department of Family and Protective Services*, 03-19-00916-CV, Termination of parental rights or conservatorship – accelerated
- E.D. vs. Texas Department of Family and Protective Services*, 03-19-00766-CV, Termination of parental rights or conservatorship – accelerated
- E.R. vs. Texas Department of Family and Protective Services*, 03-20-00033-CV, Termination of parental rights or conservatorship – accelerated
- S.C. vs. Texas Department of Family and Protective Services*, 03-20-00179-CV, Termination of parental rights or conservatorship – accelerated
- C.C. vs. Texas Department of Family and Protective Services*, 03-20-00351-CV, Termination of parental rights or conservatorship – accelerated
- M.A.R.G. vs. Texas Department of Family and Protective Services*, 03-20-00413-CV, Termination of parental rights or conservatorship – accelerated
- D.J. and A.S. vs. Texas Department of Family and Protective Services*, 03-20-00454-CV, Termination of parental rights or conservatorship – accelerated
- C.A.C. vs. Texas Department of Family and Protective Services*, 03-20-00563-CV, Termination of parental rights or conservatorship – accelerated
- J.T. vs. Texas Department of Family and Protective Services*, 03-21-00070-CV, Termination of parental rights or conservatorship – accelerated
- C.C. vs. Texas Department of Family and Protective Services*, 03-21-00161-CV, Termination of parental rights or conservatorship – accelerated
- A.A. vs. Texas Department of Family and Protective Services*, 03-21-00307-CV, Termination of parental rights or conservatorship – accelerated
- A.M. vs. Texas Department of Family and Protective Services*, 03-22-00240-CV, Termination of parental rights or conservatorship – accelerated
- S.W. and M.S. vs. Texas Department of Family and Protective Services*, 03-22-00239-CV, Termination of parental rights or conservatorship – accelerated
- B.S. and M.S. vs. Texas Department of Family and Protective Services*, 03-22-00279-CV, Termination of parental rights or conservatorship – accelerated
- E.G. vs. Texas Department of Family and Protective Services*, 03-22-00469-CV, Termination of parental rights or conservatorship – accelerated
- M.L. and S.D. vs. Texas Department of Family and Protective Services*, 03-22-00541-CV, Termination of parental rights or conservatorship – accelerated
- C.G. vs. Texas Department of Family and Protective Services*, 03-22-00754-CV, Termination of parental rights or conservatorship – accelerated (pending)

## Speeches & Publications

• *“Traveling to a Foreign Destination: How to Transition From Trial to Your First Appeal”*, presented at the Advanced Family Law: Child Abuse & Neglect Workshop, San Antonio, Texas, August 9, 2023

• *“Duties and Responsibilities When Multi Ethnicity Meets Foster Care”*, presented at the 3rd Advanced Child Protection Law Course, Houston, Texas, March 6, 2020

## Honors & Awards

• **Bell County Pro Bono Award - Bell County Bar Association** (2016 and 2006) – Awarded for outstanding contributions towards making legal services possible for low income families and individuals in Bell County.

• **Catholic Education Award – Diocese of Austin** (2012) - Nominated by St. Mary’s Catholic School, Temple, TX; past member of School Advisory Board, Secretary, and active fundraiser & coordinator of the School’s Guardian Angels Program.

• **Chairperson and Trustee - 6 years of Service - State Bar of Texas Insurance Trust** (1998) – This was a quasi-governmental appointment, managing the trust that funded insurance offered to Texas attorneys.

• **1993-1997 Contribution to Residents of Public Housing - Housing Authority of the City of Houston** (1997) – As a Commissioner of the Housing Authority of City of Houston, I helped to make policy decisions affecting public housing in the City of Houston, heard public comments during sessions, and evaluated bond proposals.

## Other Certifications

• US Sailing Club Judge

## Family

• Married to Adolph Mares, M.D.  
• Daughter, Alexandra



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By Yolanda Cortés Mares

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## TRAVELING TO A FOREIGN DESTINATION: TRANSITIONING FROM TRIAL TO YOUR FIRST APPEAL

By Yolanda Cortés Mares

### 1. Where are you going, how will you get there, and what do you want to do?

- **Where are you going?** You've tried your parental termination or child protection case and your client wants to appeal. So, what do you do now? You have a few choices. You can pick up the telephone and call an appellate attorney friend (who might appreciate the referral and even answer a few of your questions if you're suddenly worried about whether or not you preserved the record well enough for the appeal<sup>1</sup>). You can do nothing, let the dust settle, go on to your next case, and worry about the Grievance Committee later (just make sure you have plenty of malpractice insurance!). Or, you can grab a cup of coffee the morning after your amazing closing argument and carefully start to plan your travel to a place you've never been – the Court of Appeals.

- **How do you appeal?** If you've never appealed a "CPS case", this paper is an overview to help you make those travel arrangements with competence and confidence. You will need a current copy of the Texas Rules of Civil Procedure, Texas Rules of Appellate Procedure (the latest version is available on the Texas Court of Appeals website at <https://www.txcourts.gov/rules-forms/rules-standards/>), and Texas Family Code. Let's begin.

- **What can be appealed?** Historically, appealable orders in Texas are only final judgments or orders, such as after a trial on the merits, that disposes of all pending parties and claims. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191 (Tex. 2001), *superseded by Statute as stated in Industrial Specialists, LLC v. Blanchard Refining Company, LLC*, 652 S.W.3d 11 (Tex. 2022). You can't assume that you can appeal interlocutory orders to the appellate court, such as temporary orders. But, there are exceptions to the final-judgment rule<sup>2</sup> and appellate courts have absolute discretion to accept or deny an interlocutory appeal.<sup>3</sup> (Note: Procedures to request an appeal of interlocutory orders are not covered in this paper. Likewise, mandamus

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<sup>1</sup> For preservation of appellate complaints, see Tex. R. App. P. 33.1.

<sup>2</sup> See Tex. Civ. Prac. & Rem. Code §51.014.

<sup>3</sup> See *Sabre Travel Int'l. Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725 (Tex. 2019); Tex. R. App. P. 28.3.

of temporary orders is not covered in this paper. Briefly, to be entitled to mandamus relief, you (the “relator”) must show that the trial court committed a clear abuse of discretion and that you have no adequate remedy by appeal. *In re Ford Motor Co.*, 165 S.W.3d 315, 317 (Tex. 2005). A trial court abuses its discretion if “ ‘it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law’ ” or if it clearly fails to correctly analyze or apply the law. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). However, “mandamus will not issue when the law provides another plain, adequate, and complete remedy.” *In re Texas Department of Family & Protective Services*, 210 S.W.3d 609, 613 (Tex. 2006).))

## 2. Who appeals – are *you* responsible for making the travel arrangements?

- **Any party:** Any party to the trial proceeding who “wants to alter the judgment or other appealable order”<sup>4</sup>, can appeal a final judgment or order: a parent, an alleged or presumed father, a child, the Texas Department of Family and Protective Services, the Attorney General of Texas, an intervenor (i.e., foster parent, grandparent, relative/fictive kin caregiver, stepparent, etc.), etc. But, because trial and appellate counsel are often different people, there can be misunderstandings as to which attorney – the trial attorney or the appellate counsel - is responsible for filing a Motion for New Trial or a Notice of Appeal, or for identifying and/or drafting the points on appeal. Due to the accelerated timetable for these appeals, *you* are responsible as trial counsel for filing these documents. “Trial counsel’s failure to follow through with his representation until relieved of that duty was tantamount to abandoning his client at a critical stage of the proceeding.” See *In re J.O.A.*, 283 S.W. 3d 336, at 343 (Tex. 2008); Tex. R. Civ. P. 10.

- **Attorneys Ad Litem for parents:** An attorney ad litem appointed under Tex. Fam. Code §107.013 to represent the interests of a parent shall “abide by the parent’s objectives for representation”.<sup>5</sup> Also, an attorney ad litem appointed to represent a parent or an alleged father in a suit filed by a government entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested, continues to serve in that capacity until the earliest of the date the suit is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the

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<sup>4</sup> Tex. R. App. P. 25.1(c).

<sup>5</sup> Tex. Fam. Code §107.0131(a)(1)(H); See also Texas Disciplinary Rules of Professional Conduct 1.02(a).

attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.<sup>6</sup> So, if you are court appointed counsel for a parent, and your client wants to appeal, you have an obligation to file these documents. You have an obligation to appeal, all the way to the Texas Supreme Court! See *In the Interest of P.M.*, 520 S.W.3d 24, at 27 (Tex. 2016).<sup>7</sup>

- **Attorneys Ad Litem for children:** Attorneys Ad Litem for a child may also have an obligation to file an appeal pursuant to the child's expressed objectives.<sup>8</sup> An attorney ad litem appointed under Tex. Fam. Code §107.003 to represent a child or an amicus attorney appointed to assist the court shall "participate in the conduct of the litigation to the same extent as an attorney for a party".<sup>9</sup> So, if you are court appointed to represent a child, your teenage client wants to appeal, and you have determined that your client is "competent to understand the nature of the attorney-client relationship" and has formed that relationship with you, you may also have an obligation to file these documents.<sup>10</sup>

### 3. Will you need a passport and any visas?

- **The Accelerated Appeal.** An appeal of a final order rendered under Tex. Fam. Code Chapter 263, Subchapter E, which is a final order for a child under the care of the Texas Department of Family and Protective Services, is governed by the rules of appellate procedure for *accelerated appeals* in civil cases. Accelerated appeals are appeals in parental termination<sup>11</sup> and child protection cases<sup>12</sup>, as well as from orders certifying a child to stand trial as an adult.<sup>13</sup> So, watch out! These are not "normal" appeals. There are very specific rules that govern accelerated appeals.

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<sup>6</sup> Tex. Fam. Code §107.016(2)

<sup>7</sup> An indigent parent has a right to petition for review.

<sup>8</sup> Tex. Fam. Code §107.004(a)(2).

<sup>9</sup> Tex. Fam. Code §107.003(a)(1)(F).

<sup>10</sup> Tex. Fam. Code §107.004(a)(2).

<sup>11</sup> "...a 'parental termination case' means a suit in which termination of the parent-child relationship is at issue." Tex. R. App. P. 28.4(a)(2)(A).

<sup>12</sup> "...a 'child protection case' means a suit affecting th parent-child relationship filed by a governmental entity for managing conservatorship." Tex. R. App. P. 28.4(a)(2)(B).

<sup>13</sup> Tex. R. App. P. 28.4.

**(a) Visa #1 - Filing deadline & extensions:** Ordinarily, a Notice of Appeal must be filed within 30 days after the judgment is signed.<sup>14</sup> But, in an *accelerated appeal*, the Notice of Appeal must be filed within 20 days after the judgment or order is signed to perfect your appeal.<sup>15</sup> Caution: Failure to file within 20 days can be fatal! Although the appellate court may extend the time to file the Notice of Appeal, an extension is not guaranteed. To request an extension, you must file your Notice of Appeal in the trial court within 15 days after the deadline for filing the Notice of Appeal and you must also file in the appellate court a motion in compliance with Tex. R. App. P. 10.5(b)(2), stating the deadline for filing the Notice of Appeal, the facts relied on to reasonably explain your need for an extension, identify the trial court, the date of the trial court's judgment or appealable order, and the case number and style of the case in the trial court.<sup>16</sup> You will need a certificate of conference. You may amend the Notice of Appeal: (1) at any time before your brief is filed, subject to being struck for cause, and (2) after your brief is filed, but only on leave of the appellate court "and on such terms as the court may prescribe". See Tex. R. App. P. 25.1(g). (More information about briefs is below.) You may also file a joint Notice of Appeal with another party whose interests may be aligned with yours. But, "the appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause". See Tex. R. App. P. 25.1(c). [Practice Tip: Don't rely on another party to file a timely Notice of Appeal!]

**(b) Visa #2 - Requirements of underlying judgment/order - Statement and specific grounds:** Tex. Fam. Code §263.405 requires that the final order or judgment you are appealing contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT  
TO APPEAL. AN APPEAL IN A SUIT IN WHICH  
TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS  
SOUGHT IS GOVERNED BY THE PROCEDURES FOR  
ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS  
RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW  
THE TEXAS RULES OF APPELLATE PROCEDURE FOR

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<sup>14</sup> Tex. R. App. P. 26.1.

<sup>15</sup> Tex. R. App. P. 26.1(b).

<sup>16</sup> Tex. R. App. P. 26.3.

## ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.”

“In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a government entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.” See Tex. R. Civ. P. 306. So, check the order or judgment before you file your Notice of Appeal. If the order or judgment you are appealing does not contain the statement above required by Tex. Fam. Code §263.405 or the specific grounds for termination or for the appointment of the managing conservator required by Tex. R. Civ. P. 306, you may need to file a Motion Nunc Pro Tunc to correct the error. [Practice Tip: Do not wait for a hearing on your Motion Nunc Pro Tunc before you file your Notice of Appeal. Your Motion Nunc Pro Tunc does not extend the 20 day Notice of Appeal deadline for accelerated appeals!<sup>17</sup> ]

### 4. Where is your gate?

- **Filing your Notice of Appeal:** Your passport is your written Notice of Appeal. You can’t get through airport security to your departure gate without it. Where do you file it? You will file your Notice of Appeal with the trial court clerk where the trial court is located (i.e., the District Clerk). <sup>18</sup>This is the only jurisdictional requirement. “The filing of a notice of appeal by any party invokes the appellate court’s jurisdiction over all parties to the trial court’s judgment or order appealed from.” <sup>19</sup> There are 14 courts of appeals in Texas, each with at least 3 justices. Each court of appeals has jurisdiction in a specific geographical region of the state. The clerk of the appellate court having jurisdiction over the cases where your trial court is located will receive your Notice of Appeal from the trial court clerk.

- **Content of Notice of Appeal:** Pursuant to the requirements of Tex. R. App. P. 25.1(d), the Notice of Appeal must:

- (1) identify the trial court and state the case’s trial court number and style;
- (2) state the date of the judgment or order appealed from;

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<sup>17</sup> Tex. R. App. P. 26.1(a) and (b).

<sup>18</sup> Tex. R. App. P. 25.1(a).

<sup>19</sup> Tex. R. App. P. 25.1(b).

- (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 to 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 state whether it is a parental termination or child protection case or an appeal from an order certifying a child to stand trial as an adult, as defined in Tex. R. App. P. 28.4; and,
- (7) state, if applicable, that the appellant is presumed indigent and may proceed without paying costs under Tex. R. App. P. Rule 20.1.<sup>20</sup>

An appeal is perfected and the appellate court's jurisdiction is invoked when a Notice of Appeal that is written in a bona fide attempt to comply with the above requirements is filed with the trial court clerk. See *In the Interest of J.M.*, 396 S.W.3d 528, at 531 (Tex. 2013). If you mistakenly file the Notice of Appeal with the appellate court, instead of the trial court clerk, don't worry. It will be treated as though it was filed in the trial court on that same day.<sup>21</sup>

## 5. Can't afford the airline fees?

- **Indigence:** Appeals are expensive. If your client is not indigent, your client will need to pay out of pocket for the reporter's record, clerk's record, all appellate fees and costs, your attorney fees, etc. But, parents deemed indigent in the trial court are presumed indigent on appeal, subject to challenges.<sup>22</sup> A determination of indigence by the trial court carries forward to appeal.<sup>23</sup> A parent who the trial court has determined is indigent is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the trial court determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.<sup>24</sup> Nevertheless, the appellate court can permit a party to proceed without payment of costs.<sup>25</sup> The Texas Rules of Appellate Procedure

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<sup>20</sup> Tex. R. App. P. 25.1(d).

<sup>21</sup> Tex. R. App. P. 25.1(a).

<sup>22</sup> Tex. R. App. P. 20.1.

<sup>23</sup> See "Comment To 2016 Change" in Tex. R. App. P. 20.1.

<sup>24</sup> Tex. Fam. Code §107.013.

<sup>25</sup> Tex. R. App. P. 20.1.

prohibit the application of the prohibitions in Tex. Civ. Prac. & Rem. Code §13.003 to an appeal from a parental termination or child protection case.<sup>26</sup> This means that you can get a free transcript or a statement of facts to use for your appeal upon evidence of indigence and you do not need anyone to pre-determine whether your appeal has any merit before allowing you to get the free transcript or statement of facts. [Practice Tip: If you represent an indigent client, check to make sure there is a prior order in the case that finds your client indigent. If you don't, have your client sign an Affidavit of Indigency and immediately file it along with your Notice of Appeal with the trial court clerk, or have your client sign a "Statement of Inability To Afford Payment of Court Costs Or An Appeal Bond" and file that with the appellate court clerk. A form for the "Statement of Inability To Afford Payment of Court Costs Or An Appeal Bond" can be found on the appellate court's website at [www.txcourts.gov](http://www.txcourts.gov) under "Forms".]

## 6. Arrived at the airport gate too early for your flight?

- **Prematurely filed Notices of Appeal** - Don't despair. If you file your Notice of Appeal early (i.e. before the final order or judgment is signed, before a Nunc Pro Tunc order is signed, after a bench trial with the Associate Judge but before a De Novo hearing with the Presiding District Court Judge, before a hearing on your Motion For New Trial, etc.), it is premature. But, a prematurely filed Notice of Appeal is still effective. It is "deemed filed on the day of, but after, the event that begins the period for perfecting the appeal". See Tex. R. App. P. 27.1(a). For Notices of Appeal filed after a bench trial but before the De Novo hearing, or before a hearing on your Motion for New Trial, or any other post-trial motion that attempts to modify your final order, the appellate court "must treat the appeal as from the subsequent order or judgment and may treat actions relating to the appeal of the first order or judgment as relating to the appeal of the subsequent order or judgment". See Tex. R. App. P. 27.1 and 27.3. [Practice Tip: If you know you're going to appeal, just file a Notice of Appeal! Don't wait.]

Your additional duties...

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<sup>26</sup> Tex. R. App. P. 28.4(b)(3).

## 7. How much carry-on luggage do you need?

- **Service:** The Notice of Appeal must be served on all *parties* to the trial court's final judgment.<sup>27</sup> This includes, the child(ren) (i.e., the Guardian Ad Litem for the child, the Attorney Ad Litem for the child, the CASA representative, etc.), as well as any pro se party, the Texas Attorney General, and all attorneys (i.e. for the Texas Department of Family And Protective Services, parents, intervenors, etc.). You must also deliver the Notice of Appeal to each court reporter responsible for preparing the reporter's record.<sup>28</sup> [Practice Tip: As soon as you know that you will be filing a Notice of Appeal, give the court reporters a head's up so that they won't be caught at the last minute rearranging their family time, weekend travel, or vacations to transcribe the record. They will appreciate it and this will keep you in good graces with them for your next record request.] It is the trial court clerk's responsibility to forward your Notice of Appeal to the appellate court.<sup>29</sup> You do not need to worry about getting it to the appellate court.

## 8. Ready to board the aircraft?

- Congratulations! You are now at the airport gate, passport in hand, ready to board your flight. You have now just perfected your appeal. The appellate clerk will assign a case number to your appeal and will notify you by e-mail of the appellate case number and the deadline by which they are requesting you to file a Docketing Statement (see more information about Docketing Statements below); the same letter will be sent to all attorneys and any pro se parties identified by you in your Notice of Appeal, the trial court judge, and the regional presiding judge. Information about each appellate court can be found here: <https://www.txcourts.gov/about-texas-courts/courts-of-appeals.aspx>.

## 9. Are you ready for connecting flights?

- **The Appellate Record:** You will need your boarding passes. As attorney of record, your duties don't end with the filing of a timely Notice of Appeal. You must make sure that the necessary appellate record is prepared so that it is filed with the appellate court. The appellate record consists of the clerk's record and, "if

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<sup>27</sup> Tex. R. App. P. 25.1(e).

<sup>28</sup> Tex. R. App. P. 25.1(e).

<sup>29</sup> Tex. R. App. P. 25.1(f).



necessary to the appeal”, the reporter’s record. See Tex. R. App. P. 34.1. These are your boarding passes. There are strict deadlines by which these two records must be filed. The date the last record is filed initiates the deadline for you to file your appellate brief – it will be due about a month after your Notice of Appeal is filed, unless any extensions are granted.

### **(a) Boarding pass #1: Reporter’s Record**

The Reporter’s Record is prepared by the trial court reporter. The trial court is required to direct the reporter(s) to start preparing the reporter’s record upon receipt of your Notice of Appeal.<sup>30</sup> But, at or before the time you file your Notice of Appeal, you *must request in writing* that the official reporter prepare the reporter’s record, designate the exhibits to be included, the portions of the proceedings to be included, and file with the trial court clerk a copy of your request.<sup>31</sup> The reporter is then responsible for preparing, certifying, and timely filing the reporter’s record within 10 days after the date the Notice of Appeal is filed.<sup>32</sup> Extensions may be granted, but cannot exceed 30 days cumulatively, absent extraordinary circumstances.<sup>33</sup> The trial court must arrange for a substitute reporter, if needed.<sup>34</sup> [Practice Tip: What does this mean? Yes, the court of appeals can order the reporter to come back from vacation and sit in a chair in the appellate court until they complete the record. If that happens, it may also have a domino effect: disrupt the trial court’s contested docket, jury trials already scheduled, other lawyers and their schedules, etc. This would not be a good result for your first appeal. So, as soon as you know that you will be filing a Notice of Appeal, just take the time to give the court reporters a head’s up.] If you’ve had any post-judgment or post-trial proceedings, you may by letter direct the reporter to prepare, certify, and file a supplemental reporter’s record containing the omitted items.<sup>35</sup> [Practice Tip: File with the court clerk your Request for Preparation of Reporter’s Record, as well as any Request for Preparation of a Supplemental Reporter’s Record, serve a copy of it to all the attorneys and any pro se parties, and to the reporter(s) (if your trial was presided by the associate Judge, you will want to send a copy of your request to

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<sup>30</sup> Tex. R. App. P. 28.4(b)(1).

<sup>31</sup> Tex. R. App. P. 34.6(b).

<sup>32</sup> Tex. R. App. P. 35.1, 35.3.

<sup>33</sup> Tex. R. App. P. 28.4(b)(2).

<sup>34</sup> Tex. R. App. P. 28.4(b)(1).

<sup>35</sup> Tex. R. App. P. 34.(d).

both the official trial court reporter for the referring District Court as well as the court reporter for the associate Judge) through the E-file system, and also send it to the reporter by E-mail. If you are representing an indigent client, make sure there is a prior order in the case that finds your client indigent, that you have filed an Affidavit of Indigency together with your Notice of Appeal in the trial court, or that you have filed a “Statement of Inability To Afford Payment of Court Costs Or An Appeal Bond” in the appellate court.] The appellate clerk will notify you by e-mail when they receive the Reporter’s Record.

### **(b) Boarding pass #2: Clerk’s Record**

The Clerk’s Record is prepared by the trial court clerk, which is usually the District Clerk. After your Notice of Appeal is filed, the trial court clerk is required to immediately send a copy of the Notice of Appeal to the appellate court clerk, the trial court judge, and to the court reporter(s) responsible for preparing the record.<sup>36</sup> You may, but are *not required*, to request in writing the preparation of the clerk’s record. The trial court clerk is responsible for preparing, certifying, and timely filing the clerk’s record within 10 days after you have filed a Notice of Appeal *if* the party responsible for paying for the preparation of the clerk’s record (i.e., your client) has paid the clerk’s fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee (i.e., due to indigence).<sup>37</sup> Extensions may be granted for preparation of the Clerk’s Record, but cannot exceed 30 days cumulatively, absent extraordinary circumstances.<sup>38</sup> A trial court clerk may request an extension if a document has been lost or destroyed, or the originals are not easily copied, etc. But, if the trial court clerk fails to file the clerk’s record by the deadline because your client hasn’t paid the clerk’s fee, made satisfactory arrangements with the clerk to pay the fee, or your client is not entitled to appeal without paying the fee, the appellate court may dismiss the appeal for want of prosecution on its own initiative, without the need for opposing counsel to file any motion.<sup>39</sup>

The clerk’s record must include all pleadings on which the trial was held, the court’s docket sheet, the court’s charge and the jury’s verdict or the court’s findings

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<sup>36</sup> Tex. R. App. P. 25.1(f).

<sup>37</sup> Tex. R. App. P. 35.1, 35.3(a).

<sup>38</sup> Tex. R. App. P. 28.4(b)(2).

<sup>39</sup> Tex. R. App. P. 37.3(b).

of fact and conclusions of law, the court's judgment or other order that is being appealed, any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion, the notice of appeal, any formal bill of exception, any request for a reporter's record, including any statement of points or issues under Rule 34.6(c), any request for preparation of the clerk's record, a certified bill of costs, including the cost of preparing the clerk's record, showing credits for payments made, any supersedeas bond or certificate of cash deposit in lieu of a bond, *and any filing that a party designates to have included in the record.*

<sup>40</sup>So, if you want anything else included in the clerk's record (i.e., adversary hearing order, family service plans, drug tests, therapy notes, psychiatric evaluations, psychological evaluations, certificates of completion, parent-child visit observation reports, paternity registry searches, genetic testing results, status report, status review order, permanency report, permanency hearing orders, final report, temporary orders, etc.), you must make a *specific* request. <sup>41</sup>Any party can request a supplement. [Practice Tip: File with the court clerk your specific Request for Preparation of Clerk's Record File, and serve a copy of it to all the parties through the E-file system.] If the clerk or reporter request a 10 day extension to file their record, the appellate court must allow them to file the record late if it's not your fault, but the extension is not automatic if it is your fault. <sup>42</sup>"The appellate court may enter any order necessary to ensure the timely filing of the appellate record". See Tex. R. App. P. 35.3(c). The appellate clerk will notify you by e-mail when they receive the Clerk's Record.

## 10. Do you need to provide additional information at the gate?

- **The Docketing Statement:** You will need to fill out and file a Docketing Statement with the appellate court. Because the Clerk of the appellate court enters information provided in the docketing statement into the Court's case management system, it is helpful if you complete the Docketing Statement accurately and timely. When you filed the Notice of Appeal, the letter you received by e-mail from the appellate clerk indicates the deadline for filing the requested Docketing Statement. A form for the Docketing Statement can be found on your appellate court's website at [www.txcourts.gov](http://www.txcourts.gov) under "Forms". You should promptly file the Docketing Statement within 10 days after filing your Notice of

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<sup>40</sup> Tex. R. App. P. 34.5.

<sup>41</sup> Tex. R. App. P. 34.5.

<sup>42</sup> Tex. R. App. P. 35.3(c).

Appeal. Tex. R. App. P. 32.1. You can always supplement or amend it, though.<sup>43</sup> The Docketing Statement will require you to provide name and contact information for all attorneys, parties, court reporters, provide State Bar numbers and designate lead counsel, the date the Notice of Appeal was filed, the trial court's name and county as well as the name of the trial court Judge, the date of any filing that affects the time for perfecting the appeal (i.e., any motion for new trial, request for De Novo hearing, motion Nunc Pro Tunc, motion to modify judgment, etc.), the nature of the case, type of case (i.e., whether it is accelerated as a parental termination or child protection case), any request for a reporter's record, any request for temporary or ancillary relief while the appeal is pending, date of any Statement of Inability to Afford Payment of Court Costs filed, whether a supersedeas bond will be filed, manner and date of service, etc. [Practice Tip: It's a lengthy form, about 11 pages. So, give yourself at least an hour to fill it out properly.]

### **11. When are you expected to arrive at your destination?**

- **Length of Time:** Rules of Judicial Administration, Rule 6.2. "In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship ... , appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition with the following time standards: (a) Courts of Appeals. Within 180 days of the date the notice of appeal is filed. (b) Supreme Court. Within 180 days of the date the petition for review is filed." The appellate court must render its final order or judgment with the least possible delay.<sup>44</sup>

### **12. Will this be a bumpy flight?**

- **Temporary Orders during Appeal:** While your appeal is pending, the trial court can make any orders necessary to preserve and protect the safety and welfare of the child as the court deems necessary and equitable, retains jurisdiction until the 60<sup>th</sup> day after the date you file your Notice of Appeal, and continues to retain jurisdiction to modify and enforce a temporary order unless the appellate court supersedes the order.<sup>45</sup> But, while your appeal is pending, the trial court cannot suspend a final order or judgment terminating parental rights in a suit brought by

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<sup>43</sup> Tex. R. App. P. 32.3.

<sup>44</sup> Tex. Fam. Code §263.405.

<sup>45</sup> Tex. Fam. Code §109.001.

the State.<sup>46</sup> More importantly, while your appeal is pending, the child(ren) cannot be adopted until the appellate court issues its mandate affirming the termination of parental rights (see below for information about mandates).<sup>47</sup>

### 13. Need to get off the airplane at this point?

- **Withdrawing:** While your duties to your retained clients can be limited in scope pursuant to your contract and not require you to appeal<sup>48</sup>, your duties as a court appointed attorney for a parent, an alleged father, a child, or another person, don't end with the trial, even if you are withdrawing.<sup>49</sup> The Texas Family Code defines an attorney ad litem as "an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and *competent* representation." See Tex. Fam. Code §107.001(2).

Rule 1.01 of the Texas Rules of Disciplinary Procedure require you to provide competent and diligent representation:

#### "Rule 1.01 Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

- (1) neglect a legal matter entrusted to the lawyer; or
- (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

(c) As used in this Rule neglect signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients."

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<sup>46</sup> Tex. Fam. Code §109.001(d).

<sup>47</sup> See Tex. Fam Code §109.001 et seq. and Tex. Fam Code §162.001 et seq.

<sup>48</sup> Texas Disciplinary Rules of Professional Conduct 1.02(b).

<sup>49</sup> Texas Disciplinary Rules of Professional Conduct 1.15(d).

If you don't feel competent enough to travel just yet to the land of appeals, or you are too busy with your caseload, just file a Motion to Withdraw<sup>50</sup> or a Motion to Substitute as attorney of record in the trial court along with your timely Notice of Appeal, Request for Reporter's Record, Request for Clerk's Record, Motion for New Trial (if needed), together with any other post-trial motions needed, and set your Motion to Withdraw or Motion to Substitute for hearing to ensure the transition to a new attorney can be as seamless and expeditious as possible. Note: The 20 day Notice of Appeal deadline for accelerated appeals is not extended by post-judgment filings, such as a Motion for New Trial or a Motion to Withdraw/Substitute!<sup>51</sup>

If you're ready now to jump on the airplane and file your first appeal, get ready for a short voyage!

BUT, WAIT....

#### **14.Are you at the wrong terminal?**

- **Motion for New Trial:** Was the judgment or order you are appealing pursuant to a Jury Trial? If so, you are *required* to file a Motion for New Trial as 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 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 inadequacy or excessiveness of the damages found by the jury; or,
- (5) Incurable jury argument if not otherwise ruled on by the trial court.<sup>52</sup>

If you are withdrawing from the case after a jury trial, make sure you file a Motion for New Trial to preserve your client's appellate complaints for jury

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<sup>50</sup> See Tex. R. Civ. P. 10.

<sup>51</sup> Tex. R. App. P. 26.1(a) and (b).

<sup>52</sup> Tex. R. Civ. P. 324(b).

misconduct, newly discovered evidence, incurable jury argument, factual insufficiency, and complaints about the overwhelming weight of evidence.<sup>53</sup> If the judgment or order was pursuant to a bench trial, you are not required to file a Motion for New Trial.<sup>54</sup> You can go straight to the court of appeals for relief and make a complaint for the first time there about legal or factual insufficiency of the evidence.<sup>55</sup> [Practice Tip: If you request a Motion for New Trial, your only remedy is a new trial – you are not entitled to a different rendition of judgment.]

- **Other Post-Trial Motions:** If you want to preserve your client’s appellate complaint for legally insufficient evidence or matter of law issues after a jury trial, you can also file a Motion for Directed Verdict, a Motion for Judgment Non Obstante Verdicto, or an objection to the submission of a jury question. You can also file a Motion To Modify Judgment. You may need to request Findings of Fact and Conclusions of Law after a bench trial<sup>56</sup>. But, in a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.<sup>57</sup> If the findings of fact or conclusions of law are omitted without objection, the appellate court can presume that the trial court made the correct finding or conclusion in support of the judgment. Since a trial court has plenary power for 30 days after the judgment is signed, post-trial motions must be filed within 30 days after the date the judgment is signed (or within 30 days after any post-judgment motions, such as a Motion for New Trial, are denied); any post trial motions not ruled upon are overruled by law after 75 days from the date the judgment is signed.<sup>58</sup> However, *none* of your post- trial motions extend the 20 day deadline to file a Notice of Appeal for accelerated appeals!<sup>59</sup> [Practice Tip: You can always file a Motion to Dismiss your appeal in the appellate court if you get the post-judgment relief you want or a Motion to Abate the Appeal if your Motion for New Trial is granted. So, timely file your Notice of Appeal, even if you’re filing post-trial motions.

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<sup>53</sup> Tex. R. App. P. 33.1(a) and (b).

<sup>54</sup> Tex. R. Civ. P. 324(a).

<sup>55</sup> Tex. R. App. P. 33.1(d).

<sup>56</sup> Tex. R. Civ. P. 296-299a.

<sup>57</sup> Tex. R. Civ. P. 306.

<sup>58</sup> Tex. R. Civ. P. 329b.

<sup>59</sup> Tex. R. App. P. 26.1(a) and (b).

The original Notice of Appeal will cover any subsequent changes to the trial court's original judgment.<sup>60]</sup>

### 15. Will you pass inspection by Customs and Border Protection?

- **The Brief:** You're staring at your computer screen. You've had your coffee. You are now ready to write your first brief. Writing an appellate brief is not easy. There are several technical requirements you need to know about before you begin.

**(a) Form.** Electronically filed documents filed with the appellate court must be in text-searchable PDF format (not scanned) on 8 ½ by 11 inches paper, with at least 1 inch margins on both sides and at the top and bottom, double-spaced (except for footnotes, quotations, short lists, and issues or points of error, which may be single-spaced), typed in a conventional typeface no smaller than 14 point, except for footnotes which must be no smaller than 12 point (this paper is written in that format). There are different requirements for typewritten documents or documents filed in paper form.<sup>61</sup>

**(b) Cover.** The document's front cover "must contain the case style, the case number, the title of the document being filed, the name of the party filing the document, and the name, mailing address, telephone number, fax number, if any, email address, and State Bar of Texas identification number of the lead counsel for the filing party. If a party requests oral argument in the court of appeals, the request *must* appear on the front cover of that party's first brief." See Tex. R. App. P. 9.4.

**(c) Length.** Tex. R. App. P. 9.4(i) governs the requirements for the length of your brief. The length of each document must be calculated and the number indicated on a certificate of compliance at the end of the document. You may rely on the word count generated by your word processor. "In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of the issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service,

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<sup>60</sup> Tex. R. App. P. 27.3.

<sup>61</sup> Tex. R. App. P. 9.4.



certification, certificate of compliance, and appendix.”<sup>62</sup> So, what are the items that count in your word count? The Statement of Facts, the Summary of the Argument, the Argument (including any accompanying standard of review), the Prayer, and all footnotes. Appellant briefs and appellee briefs are each limited to 15,000 words (or 50 pages if not computer generated). Reply briefs are limited to 7,500 words (or 25 pages if not computer generated). The aggregate of all briefs per party must not exceed 27,000 words (or 90 pages if not computer generated).

**(d) Content.** Your brief must contain the following information, as more particularly specified in Tex. R. App. P. 38.1:

- (1) Identity of parties and counsel (including the child’s ad litem, as well as all trial and appellate counsel);
- (2) Table of contents (refer to the page number of each section);
- (3) Index of authorities (must be alphabetical, sorted by type of authority, with the pages in the brief on which the authorities are cited);
- (4) Statement of the case (state the nature of the case, trial court’s disposition, course of proceedings, no factual discussion);
- (5) Any statement regarding oral argument (explain why argument should or should not be granted, why decisional process would be aided if requested, whether there are any novel legal issues, conflicts among appellate courts, novel factual situations, etc.);
- (6) Issues presented;
- (7) Statement of facts;
- (8) Summary of the argument;
- (9) Argument;
- (10) Prayer; and,
- (11) Appendix.

All of the sections above must be included in your brief. “Any party may join in or adopt by reference all or any part of a brief, petition, response, motion, or other document filed in an appellate court by another party in the same case.” <sup>63</sup> The Appellee’s Brief can, therefore, adopt by reference portions of the Appellant’s Brief. The appellant may file a reply brief, but the appellate court may decide the case

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<sup>62</sup> Tex. R. App. P. 9.4(i)(1).

<sup>63</sup> Tex. R. App. P. 9.7.

before it is filed.<sup>64</sup> The appellate court may also require amendment or re-briefing if there are any formal or substantive defects with the briefing.<sup>65</sup> Although briefing rules are construed liberally, it is important to comply with Tex. R. App. P. 38.

[Practice Tips: The Index of Authorities should be arranged alphabetically and divided into cases, statutes, and other authorities. Pages should be numbered and the Table of Contents should refer to the pages in the brief. The Appendix should include the text of all the statutes and constitutional provisions referred to in your argument, any other relevant document (that is already part of the record or the appellate court can take judicial notice thereof), as well as a *redacted* copy of the judgment or order you are appealing, the jury charge and verdict, if any, or findings of fact and conclusions of law (if applicable to your case). If you are submitting your brief electronically, the Appendix should be bookmarked to assist in locating each item when there are more than one items<sup>66</sup>. But, do not use the Appendix to avoid page limits. Ideally, the Statement of the Case should not exceed ½ page (it should tell the court what type of case it was, the trial court’s judgment or ruling – but should not include the facts of your case – and what took place procedurally until now). If you are requesting oral argument, make sure it appears on the cover page. List all issues or points presented and use the issues to advocate your argument. An example of an issue is: Did the trial court err (or, alternatively, abuse its discretion) in terminating Mother’s parental rights under Tex. Fam. Code §161.001(b)(1)(D) when there was little or no evidence that Mother knowingly placed or knowingly allowed her child to remain in conditions or surroundings which endangered her child’s physical or emotional well-being after Mother was hospitalized and in a coma? An example of the related argument is: Did the trial court have factually and legally sufficient evidence to terminate Mother’s parental rights under Tex. Fam. Code §161.001(b)(1)(D)? Be persuasive and concise with your arguments and make sure you cover all of the issues or points you need to cover so that you don’t waive something you believe is important. Try to develop a theme to make your brief enjoyable to read. But, put your best issues first and develop those into compelling arguments. For example, if your client’s parental rights were terminated under Tex. Fam. Code §161.001(b)(1)(O), you might want to focus more deeply on a best interest analysis under Tex. Fam. Code §161.001(b)(2) than on the merits of your client’s partial completion of services. But, if your client was disabled and didn’t

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<sup>64</sup> Tex. R. App. P. 38.3.

<sup>65</sup> Tex. R. App. P.

<sup>66</sup> Tex. R. App. P. 9.4(h).

receive reasonable accommodations or spoke a different language and didn't understand the Family Service Plan written in the English language, you might want to focus more on that issue. The Summary of the Argument should be a "succinct, clear and accurate statement of the arguments"<sup>67</sup>. The Argument should contain the standard of review and have citations to authority as well as to the appellate record.<sup>68</sup> Since the only factual issues you can complain about in your brief are those that are contained in the appellate record<sup>69</sup>, citations to the Reporter's Record ("RR") and the Clerk's Record ("CR") must be provided throughout the brief, in addition to legal authority supporting your position. The Statement of Facts must be supported by record references. Lastly, always check your citations to ensure you are not citing a case that has been superseded or overturned. Note: Failure to properly brief an issue on appeal can result in waiver of the issue due to inadequate briefing!]

**(e) Deadline.** Your appellant's brief must be filed within 20 days after the later of either the date the clerk's record was filed or the date the reporter's record was filed. Tex. R. App. P. 38.6. If you cannot file your brief within the deadline, even if it is just a few minutes late, a motion for extension of time to file the brief is required. Tex. R. App. P. 38.7. The appellate court may dismiss your appeal for want of prosecution if you fail to file a brief on time or a motion for extension of time! See Tex. R. App. P. 38.8(a)(1). The appellee's brief must be filed within 20 days after your appellant's brief is filed and the appellee may request an extension. After the appellee's brief is filed, you may file a reply brief (optional). Any party may timely request oral argument.<sup>70</sup> After the appellate court receives all the briefs, the appellate clerk will provide notice of oral argument if oral argument is granted by the appellate court, or let the parties know that the case will be submitted without argument.<sup>71</sup>

**(f) Redaction.** Documents submitted with your brief (i.e., Decree of Termination, De Novo orders, etc.) must be redacted to protect any minor's identity by using a person's initials or a fictitious name as an alias. Tex. R. App. P. 9.8 requires that:

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<sup>67</sup> Tex. R. App. P. 38.1(h).

<sup>68</sup> Tex. R. App. P. 38.1(i)

<sup>69</sup> Tex. R. App. P. 33.

<sup>70</sup> Tex. R. App. P. 39.1, 39.7.

<sup>71</sup> Tex. R. App. P. 39.8.

“(1) Except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

- (A) A minor must be identified only by an alias unless the court orders otherwise;
  - (B) The court may order that a minor’s parent or other family member be identified only by an alias if necessary to protect a minor’s identity; and
  - (C) All documents must be redacted accordingly;
- (2) The court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor’s identity, to the minor’s parent or other family member.”

[Practice Tip: Use an alias name for parents as well as the children. You can get creative with this by using “Mother”, “Father”, “Child #1”, etc., or other descriptive alias names, instead of initials to make your brief easier to read. Include the legend of pseudonyms when you identify all parties and counsel at the beginning of your brief.]

In addition, the filing of documents containing sensitive data is prohibited. Tex. R. App. P. 9.9 (a) defines sensitive data as:

- “(1) a driver’s license number, passport number, social security number, tax identification number or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number; and
- (3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.”

## 16.Count your luggage!

- **Prayer:** What are you asking for? Appeals in the courts of appeals are heard by a panel consisting of a minimum of three justices, unless an *en banc* hearing is requested and ordered in a particular case, in which instance all the justices of a court hear and consider the case (more information about requesting an *en banc* hearing is provided below). What are you asking them to do? [Practice Tip: Clearly

ask for the relief you want in your Prayer. You can use alternative requests for relief. If you don't ask for it, don't assume you'll get it.] The appellate court may:

- (1) Affirm the trial court's judgment in whole or in part;
- (2) Modify the trial court's judgment and affirm it as modified;
- (3) Reverse the trial court's judgment in whole or in part and render the judgment and the trial court should have rendered, except when:
  - a. A remand is necessary for further proceedings; or
  - b. The interests of justice require a remand for another trial;
- (4) Reverse the trial court's judgment and remand the case for further proceedings;
- (5) Vacate the trial court's judgment and dismiss the case; or,
- (6) Dismiss the appeal.<sup>72</sup>

The court of appeals may also make "any other appropriate order that the law and the nature of the case require". See Tex. R. App. P. 43.6.

### **17.Has some, but not all, of your luggage appeared?**

- **Reversible error:** The appellate court may reverse a judgment on the ground that the trial court made an error of law if it 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." See Tex. R. App. P. 44.1(a).

If the error affects only part of your case and that part is separable without unfairness to the parties, "the judgment must be reversed and a new trial ordered only as to the part affected by the error". Tex. R. App. P. 44.1(b). [Practice Tip: This may apply in a situation where only one parent appealed and the other did not, where only one parent appeared at the jury trial and the other did not, where the State used different burdens of proof for termination of parental rights to an ICWA child and their non-Indian sibling, etc.]

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<sup>72</sup> Tex. R. App. P. 43.2 and 43.3; See also Tex. R. App. P. 42.3: the appellate court may dismiss "(a) for want of jurisdiction; (b) for want of prosecution; or (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time."

## 18. Do you give up looking for luggage?

- **Brief on the merits v. *Anders* Briefs:** If the appellate court determines that an appeal is frivolous, the appellate court may assess damages against your client, which may include costs, unless your client was entitled to proceed without payment of costs. See Tex. R. App. P. 43.4 and 45. In compliance with the requirements of *Anders v. California*, 386 U.S. 378 (1967), you may file an “*Anders* Brief” instead of an Appellant’s Brief if you are an appointed attorney, your client wants you to appeal, and you determine that the appeal is frivolous. But, you must first comply with certain requirements before filing an *Anders* Brief. An *Anders* Brief takes time. You must file in the appellate court, at the same time as a Motion to Withdraw and *Anders* Brief, a completed Certificate of Counsel (a form may be available on your appellate court’s website) that provides written verification that you have provided copies of the motion and brief to your client, serve your client with the Motion to Withdraw and the *Anders* brief, advised your client of his/her rights to file a pro se response and identifying what your client believes to be meritorious grounds to be raised in their appeal, advised your client of his/her right to review the appellate record and explained the process for obtaining the appellate record, provided an unsigned Motion for Pro Se Access to the Appellate Record with the date and the mailing address for the appellate court, explained to your client the procedures to be followed in a frivolous appeal, including his/her right to seek discretionary review pro se if the appellate court declares his/her appeal frivolous, and informed your client of the applicable deadlines. Your *Anders* Brief must demonstrate a diligent review of the record and the applicable law, and explain the reason the appeal is frivolous. [Practice Tip: Check the local rules of practice of your appellate court for their specific *Anders* requirements. *Anders* guidelines, checklist, and forms are on appellate court websites under “Practice Before The Court”.]

- Before you decide to file an *Anders* Brief, you may need to examine:

- (1) all the pleadings;
- (2) jurisdiction;
- (3) pre-trial matters and motions;
- (4) jury selection, if a jury trial;
- (5) expert testimony;
- (6) jury argument, if a jury trial;
- (7) the court’s jury charge, if a jury trial;

- (8) questions submitted to the jury, if a jury trial;
- (9) trial court's rulings on evidence and procedural matters;
- (10) sufficiency of the evidence;
- (11) assistance of counsel;
- (12) assessment of court costs or attorney's fees;
- (13) the order or judgment;
- (14) post-trial matters and motions;
- (15) reporter's record; and,
- (16) clerk's record.

Caution: Termination of parental rights based on statutory endangerment grounds under Tex. Fam. Code §161.001(b)(1)(D) and (E) have significant collateral consequences that can affect a parent's rights to other children<sup>73</sup> and termination on those grounds requires a heightened standard of review of the trial court's findings even when another ground under Tex. Fam. Code §161.001(b)(1) is sufficient for termination; due process requires the appellate court to review that finding and detail its analysis of the factual sufficiency of the evidence and legal sufficiency of the evidence supporting termination on those grounds when challenged on appeal. See *In the Interest of N.G.*, 577 S.W.3d 230 (Tex. 2019). Termination of parental rights also requires a best interest analysis to determine if termination is in the best interest of the child<sup>74</sup>. Under a factual sufficiency review, the appellate court can apply the *Holley v. Adams* factors.<sup>75</sup> [Practice Tip: If your appeal appears frivolous after a cursory review of the appellate record, you should examine the appellate record carefully before you plan to file an *Anders* Brief, especially if your case resulted in termination of parental rights. Just because your chance of prevailing is small, it does not mean that the appeal is frivolous. The time it takes to satisfy all the requirements of filing an *Anders* Brief can be used to file a brief on the merits.]

If a parent is entitled to a court appointed attorney, the parent is entitled to effective assistance of counsel. See *In re J.O.A.*, 283 S.W.3d 336 (Tex. 2009). This extends to proceedings in the Supreme Court of Texas, including a Petition for Review, as well as an *Anders* Brief and any motion to withdraw. See *In re P.M.*, 520 S.W.3d 24 (Tex. 2016).

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<sup>73</sup> Tex. Fam. Code §161.001(b)(1)(M).

<sup>74</sup> Tex. Fam. Code §161.001(b)(2).

<sup>75</sup> *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976)

## 19. Arriving at your destination.

- **Mandate:** These appeals are fast! In an appeal of a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a government entity for managing conservatorship, appellate courts should, so far as reasonably possible, ensure that the appeal is brought to final disposition within 180 days of filing a Notice of Appeal in the Courts of Appeals or within 180 days of filing a petition for review in the Supreme Court.<sup>76</sup>

After reviewing the appellate record, along with all briefs filed (your Appellant's Brief, your opponents' Appellee's Brief, and any responsive briefs), and hearing any oral argument, the appellate court will render a decision about your appeal by issuing an Opinion or a Memorandum Opinion and the appellate clerk will deliver copies of the opinion and judgment to you, as well as to all other attorneys and any pro se parties to the appeal, the trial court clerk, the trial court Judge, and the regional administrative judge.<sup>77</sup> If you are not satisfied with the appellate court's decision, you can file a Motion for Rehearing and/or Motion for an En Banc Consideration within 15 days after the judgment or order is rendered. See Tex. R. App. 49 for specific requirements. After ruling on the Motion for Rehearing and/or Motion for an En Banc Consideration, the appellate court will issue its final judgment and then eventually issue its mandate.<sup>78</sup> The appellate clerk will issue the mandate to the clerk of the trial court according to the time periods provided by Tex. R. App. P. 18.1. Any further proceeding in the trial court must conform to the mandate and the appellate court's judgment must be enforced.<sup>79</sup> If the appellate court affirms the trial court judgment or order, the child(ren) can be adopted after the mandate is issued. See Tex. Fam Code §109.001 et seq. and Tex. Fam Code §162.001 et seq. If the appellate court reverses the trial court's judgment in whole or in part and remands the case to the trial court for further proceedings or a new trial, the mandate will inform you, all the other appellate attorneys in your appeal, and any pro se parties identified by you in your Docketing Statement, of the deadline for further proceedings or a new trial. The appellate timetable starts all over again from the date the new judgment or order is signed.

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<sup>76</sup> Tex. R. Jud. Admin. 6.2.

<sup>77</sup> Tex. R. App. P. 47 and 48.1.

<sup>78</sup> Tex. R. App. P. 51.1.

<sup>79</sup> Tex. R. App. P. 18.6, 51.1.



Congratulations! You've arrived at your destination! But...

## **20. Need a taxi to get you somewhere else?**

**Appealing the appellate court's decision.** After receiving the appellate court's decision, you may file a petition for review<sup>80</sup> in the Texas Supreme Court without filing first a Motion for Rehearing and/or Motion for an En Banc Consideration.<sup>81</sup> See Tex. R. App. P. 53-65 for specific requirements. You may also request a stay of the mandate pending the United States Supreme Court's disposition of a petition for writ of certiorari.<sup>82</sup>

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<sup>80</sup> See Tex. R. App. P. 53-56 for specific requirements.

<sup>81</sup> Tex. R. App. P. 49.10.

<sup>82</sup> Tex. R. App. P. 18.2.



## APPENDIX



# **ACCELERATED APPEAL** **WORKSHEET**

NAME OF CASE: \_\_\_\_\_

CAUSE NO.: \_\_\_\_\_

COURT: \_\_\_\_\_

DATE(S) TRIAL HELD: \_\_\_\_\_

ATTORNEY NAMES: \_\_\_\_\_

PRO SE PARTY NAMES: \_\_\_\_\_

COURT REPORTER NAME: \_\_\_\_\_

(A)DATE TRIAL COURT JUDGMENT IS SIGNED: \_\_\_\_\_

NOTICE OF APPEAL DUE 20 DAYS AFTER (A): \_\_\_\_\_

APPELLATE RECORD DUE 10 DAYS AFTER NOTICE OF APPEAL FILED  
(10 DAY EXTENSION MAX ALLOWED): \_\_\_\_\_

(B)DATE CLERK'S RECORD FILED: \_\_\_\_\_

(C)DATE REPORTER'S RECORD FILED: \_\_\_\_\_

APPELLANT BRIEF DUE 20 DAYS AFTER THE LATER OF (A) OR (B):  
\_\_\_\_\_

APPELLEE BRIEF DUE 20 DAYS AFTER APPELLANT BRIEF: \_\_\_\_\_

EXTENSION DATE: \_\_\_\_\_

REPLY BRIEF DUE 20 DAYS AFTER APPELLEE BRIEF: \_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**

**NO.** \_\_\_\_\_

**IN THE INTEREST OF**

§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**OF \_\_\_\_ COUNTY, TEXAS**

**MINOR CHILDREN**

**\_\_\_\_ JUDICIAL DISTRICT**

**NOTICE OF APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Respondent, \_\_\_\_\_, desires to appeal from all portions of the judgment in the “Decree of Termination” signed by the Associate Judge for this Court on \_\_\_\_\_ after a non-jury trial beginning on \_\_\_\_\_ and continuing on \_\_\_\_\_.
2. Respondent appeals to the Third Court of Appeals.
3. This an accelerated appeal. This is a parental termination case and a child protection case as defined in Texas Rules of Appellate Procedure 28.4(a)(2)(A) and 28.4(a)(2)(B).
4. This Notice of Appeal is filed in accordance with TEX. FAM. CODE. ANN. 109.002, 263.405, and TEX. R. APP. P. 4.1, 20.1, 26.1(b), and 35.1(b).
5. Appellant is presumed indigent and may proceed without advance payment of costs under TEX. R. APP. P. 20.1.

Respectfully Submitted,

YOLANDA CORTES MARES  
ATTORNEY AT LAW  
2106 BIRD CREEK DR.  
TEMPLE, TX 76502  
Tel: (254) 771-1412  
Fax: (254) 771-2082

By: \_\_\_\_\_  
Yolanda Cortes Mares  
State Bar No. 22079000  
ymares@earthlink.net  
Attorney for Respondent,  
\_\_\_\_\_

### Certificate of Service

I certify that a true copy of this Notice of Appeal was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on each party or that party's lead counsel as follows:

I certify that a true copy of the above was filed electronically and served electronically through the e-file TX Courts electronic filing manager on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_.

A copy of this notice has also been served on the court reporter responsible for preparation of the trial court record: \_\_\_\_\_, Official Court Reporter for the \_\_\_\_\_ Court (by email at \_\_\_\_\_) and \_\_\_\_\_, Official Court Reporter for the \_\_\_\_\_ District Court (by email at \_\_\_\_\_).

\_\_\_\_\_  
Attorney for Respondent,  
\_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**

**NO.** \_\_\_\_\_

**IN THE INTEREST OF**

**§ IN THE DISTRICT COURT**  
**§**  
**§**  
**§ OF \_\_\_\_\_ COUNTY, TEXAS**  
**§**  
**§**  
**§ \_\_\_\_\_ JUDICIAL DISTRICT**

**MINOR CHILDREN**

**NOTICE OF APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Respondent, \_\_\_\_\_, desires to appeal from all portions of the judgment in the “Decree of Termination and Order Appointing Managing Conservator” signed by the Presiding Judge for this Court on \_\_\_\_\_ after a jury trial on \_\_\_\_\_ and a hearing on \_\_\_\_\_.

2. Respondent appeals to the Third Court of Appeals.

3. This an accelerated appeal. This is a parental termination case and a child protection case as defined in Texas Rules of Appellate Procedure 28.4(a)(2)(A) and 28.4(a)(2)(B).

4. This Notice of Appeal is filed in accordance with TEX. FAM. CODE. ANN. 109.002, 263.405, and TEX. R. APP. P. 4.1, 20.1, 26.1(b), and 35.1(b).

5. Appellant is presumed indigent and may proceed without advance payment of costs under TEX. R. APP. P. 20.1.

Respectfully Submitted,



YOLANDA CORTES MARES  
ATTORNEY AT LAW  
2106 BIRD CREEK DR.  
TEMPLE, TX 76502  
Tel: (254) 771-1412  
Fax: (254) 771-2082

By: \_\_\_\_\_  
Yolanda Cortes Mares  
State Bar No. 22079000  
ymares@earthlink.net  
Attorney for Respondent,  
\_\_\_\_\_

### **Certificate of Service**

I certify that a true copy of this Notice of Appeal was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on each party or that party's lead counsel as follows:

I certify that a true copy of the above was filed electronically and served electronically through the e-file TX Courts electronic filing manager on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_.

A copy of this notice has also been served on the court reporter responsible for preparation of the trial court record: \_\_\_\_\_, Official Court Reporter for the \_\_\_\_\_ District Court (by email at \_\_\_\_\_).

\_\_\_\_\_  
Attorney for Respondent,  
\_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**

NO. \_\_\_\_\_

IN THE INTEREST OF

§ IN THE DISTRICT COURT

§

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§

§

§

§

OF \_\_\_\_\_ COUNTY, TEXAS

MINOR CHILDREN

\_\_\_\_\_ JUDICIAL DISTRICT

**RESPONDENT'S REQUEST FOR PREPARATION OF THE REPORTER'S RECORD**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now \_\_\_\_\_, Respondent in this case, and files this request for preparation of the reporter's record pursuant to Rule 34 of the Texas Rules of Appellate Procedure, and in support thereof, shows as follows:

1. The Presiding Judge of the \_\_\_\_\_ District Court of \_\_\_\_\_ County, Texas signed an appealable order concerning the parental rights of Respondent on \_\_\_\_\_.
2. A jury trial on (1) Petitioner's Original Petition In a Suit Affecting The Parent-Child Relationship – Termination Petition and/or Managing Conservatorship, (2) \_\_\_\_\_'s Petition For Termination of Parental Rights And Adoption of Children, and (3) \_\_\_\_\_'s Original Counter-Petition In Suit Affecting The Parent-Child Relationship, began on \_\_\_\_\_ and continued on \_\_\_\_\_ and concluded on \_\_\_\_\_, and thereafter a hearing occurred on \_\_\_\_\_.
3. Respondent requests that the Reporter prepare, file, and certify an original and one copy of the reporter's record containing all testimony from all of the witnesses, all discussion during trial outside and within the presence of the jury, all discussion during the hearing on \_\_\_\_\_ between the judge and the attorneys, and all exhibits.

4. Respondent is presumed indigent for purposes of this appeal and to obtain the record under the Texas Family Code.

5. The Notice of Appeal filed in this case was filed on \_\_\_\_\_. Thus, the reporter's record must be filed with the court of appeals within ten (10) days after the date the appellant filed the Notice of Appeal, which will be on or before \_\_\_\_\_.

Respectfully Submitted,

YOLANDA CORTES MARES  
ATTORNEY AT LAW  
2106 BIRD CREEK DR.  
TEMPLE, TX 76502  
Tel: (254) 771-1412  
Fax: (254) 771-2082

\_\_\_\_\_  
By: Yolanda Cortes Mares  
State Bar No. 22079000  
ymares@earthlink.net  
Attorney for Respondent,  
\_\_\_\_\_

### Certificate of Service

I certify that a true and correct copy of the foregoing was filed electronically and served electronically through the e-file TX Courts electronic filing manager at efile.txcourts.gov on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_.

A copy of this notice has also been served on the court reporter responsible for preparation of the trial court record: \_\_\_\_\_, Official Court Reporter for the \_\_\_\_\_ Court of the \_\_\_\_\_ District Court (by email at \_\_\_\_\_).

\_\_\_\_\_  
Attorney for Respondent,  
\_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**

NO. \_\_\_\_\_

IN THE INTEREST OF

§ IN THE DISTRICT COURT

§

§

§

OF \_\_\_\_ COUNTY, TEXAS

§

§

MINOR CHILDREN

§

\_\_\_\_ JUDICIAL DISTRICT

**RESPONDENT'S REQUEST FOR PREPARATION OF THE CLERK'S RECORD**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now \_\_\_\_\_, Respondent in this case, and files this request for preparation of the clerk's record pursuant to Rule 34 of the Texas Rules of Appellate Procedure, and in support thereof, shows as follows:

1. The Presiding Judge of the \_\_\_\_ District Court of \_\_\_\_ County, Texas signed an appealable order concerning the parental rights of Respondent on \_\_\_\_\_.
2. A jury trial on (1) Petitioner's Original Petition In a Suit Affecting The Parent-Child Relationship – Termination Petition and/or Managing Conservatorship, (2) \_\_\_\_\_'s Petition For Termination of Parental Rights And Adoption of Children, and (3) \_\_\_\_\_'s Original Counter-Petition In Suit Affecting The Parent-Child Relationship, began on \_\_\_\_\_ and continued on \_\_\_\_\_ and concluded on \_\_\_\_\_, and thereafter a hearing occurred on \_\_\_\_\_.
3. Respondent requests that the \_\_\_\_ County District Clerk prepare, file, and certify an original and one copy of the clerk's record containing the following:

- a. All pleadings on which the trial was held on \_\_\_\_\_ and continuing on \_\_\_\_\_, and concluding on \_\_\_\_\_,

and thereafter a hearing occurring on \_\_\_\_\_;

- b. The court's docket sheet;
- c. The Court's charge and the jury's verdict, or the Court's findings of fact and conclusions of law;
- d. The court's judgment or other order that is being appealed;
- e. Any requests for findings of fact and conclusions of law, any post-judgment motion, and the Court's order on the motion;
- f. The Notice of Appeal and any Amended Notice of Appeal;
- g. Any formal bill of exception;
- h. Any request for a reporter's record, including any statement of points or issues under Rule 34.6(c) of the Texas Rules of Appellate Procedure;
- i. Any request for the preparation of the Clerk's record;
- j. A certified Bill of Costs, including the cost of preparing the Clerk's record, showing credits for any payments made; and,
- k. Subject to the below request for additional items, any filing that a party designates to have included in the record.

4. Respondent requests that the \_\_\_\_ County District Clerk prepare, file, and certify an original and one copy of the clerk's record containing the following additional items:

- a. All pleadings, motions, objections, orders, notices, exhibits, requests, letters, e-mails, notes, discovery requests, requests for disclosure, responses to discovery, service of process, requests for service, service by citation by publication, notices in the \_\_\_\_ Journal, notices in the \_\_\_\_\_, notices in the \_\_\_\_\_, notices

posted on the \_\_\_\_ County, Texas courthouse door, return of service, therapy notes, progress notes, diligent searches, FINDRS reports, certificates of paternity registry searches, visit observation forms, consanguinity forms, home assessments, status reports, permanency reports, final reports, psycho social evaluations, psychological evaluations, psychiatric evaluations, discharge notes, drug tests, Rule 11 agreements, attorney fee vouchers, and any other documents filed among the papers of this cause by any party to this cause.

4. Respondent is presumed indigent for purposes of this appeal and to obtain the record under the Texas Family Code.

5. The Notice of Appeal filed in this case was filed on \_\_\_\_\_. Thus, the Clerk's record must be filed with the court of appeals within ten (10) days after the date the appellant filed the Notice of Appeal, which will be on or before \_\_\_\_\_.

Respectfully Submitted,

YOLANDA CORTES MARES  
ATTORNEY AT LAW  
2106 BIRD CREEK DR.  
TEMPLE, TX 76502  
Tel: (254) 771-1412  
Fax: (254) 771-2082

---

By: Yolanda Cortes Mares  
State Bar No. 22079000  
ymares@earthlink.net  
Attorney for Respondent,

---

**Certificate of Service**

I certify that a true and correct copy of the foregoing was filed electronically and served electronically through the e-file TX Courts electronic filing manager at efile.txcourts.gov on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_.

Attorney for Respondent,

\_\_\_\_\_

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA**

**NO.** \_\_\_\_\_

**IN THE INTEREST OF**

**§ IN THE DISTRICT COURT**

**§**

**§**

**§**

**OF \_\_\_\_\_ COUNTY, TEXAS**

**§**

**§**

**MINOR CHILDREN**

**§**

**\_\_\_\_\_ JUDICIAL DISTRICT**

**RESPONDENT'S REQUEST FOR PREPARATION OF SUPPLEMENTAL CLERK'S  
RECORD**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now \_\_\_\_\_, Respondent in this case, and files this request for preparation of the supplemental clerk's record pursuant to Rule 34 of the Texas Rules of Appellate Procedure, and in support thereof, shows as follows:

1. A Clerk's Record was provided on \_\_\_\_\_. Since then, \_\_\_\_\_ filed a Motion for New Trial with a proposed Order, the Motion for New Trial was heard on \_\_\_\_\_, and, therefore, there has been at least one post-trial hearing since \_\_\_\_\_.

2. Respondent requests that the \_\_\_\_ County District Clerk prepare, file, and certify an original and one copy of the supplemental clerk's record containing the following:

- a. The court's docket sheet on and after \_\_\_\_\_;
- b. \_\_\_\_\_'s Motion for New Trial filed on \_\_\_\_\_, together with the proposed or signed order.
- c. Any post-judgment motion filed on and after \_\_\_\_\_, and the



Court's order on the motion;

- d. Any request for the preparation of the Clerk's record, including this request;
- e. A certified Bill of Costs, including the cost of preparing the supplemental Clerk's record, showing credits for any payments made; and,
- f. Subject to the below request for additional items, any filing that a party designates to have included in the record.

3. Respondent requests that the \_\_\_\_\_ County District Clerk prepare, file, and certify an original and one copy of the supplemental clerk's record containing the following additional items:

- a. All pleadings, motions, objections, orders, notices, exhibits, requests, letters, e-mails, notes, and any other documents filed among the papers of this cause by any party to this cause on and after \_\_\_\_\_.

4. Respondent is presumed indigent for purposes of this appeal and to obtain the record under the Texas Family Code.

5. A Notice of Appeal in this case was already filed on \_\_\_\_\_. Thus, the Supplemental Clerk's record must be filed with the court of appeals on or before ten (10) days after today, which will be on or before \_\_\_\_\_.

Respectfully Submitted,

YOLANDA CORTES MARES  
ATTORNEY AT LAW  
2106 BIRD CREEK DR.  
TEMPLE, TX 76502  
Tel: (254) 771-1412  
Fax: (254) 771-2082

\_\_\_\_\_  
By: Yolanda Cortes Mares  
State Bar No. 22079000  
ymares@earthlink.net  
Attorney for Respondent,  
\_\_\_\_\_

### **Certificate of Service**

I certify that a true and correct copy of the foregoing was filed electronically and served electronically through the e-file TX Courts electronic filing manager at efile.txcourts.gov on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Respondent,  
\_\_\_\_\_

No. [REDACTED]

IN THE COURT OF APPEALS  
FOR THE THIRD JUDICIAL DISTRICT OF TEXAS  
AUSTIN, TEXAS

---

[REDACTED]  
Appellant

V.

TEXAS DEPARTMENT OF FAMILY  
AND PROTECTIVE SERVICES,  
Appellee

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**APPELLANT'S BRIEF**

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On Appeal from Cause No. [REDACTED] in the  
[REDACTED] Judicial District Court of [REDACTED], Texas  
Honorable [REDACTED], Judge Presiding

YOLANDA CORTES MARES,  
Attorney At Law  
State Bar Number 22079000  
2106 Birdcreek Dr.  
Temple, TX 76502  
Telephone: (254)771-1412  
Facsimile: (254)771-2082  
e-mail: ymares@earthlink.net  
Counsel for Appellant [REDACTED].

**ORAL ARGUMENT NOT REQUESTED**

## **IDENTITY OF PARTIES AND COUNSEL**

Pursuant to Tex. R. App. P. 9.8 regarding the use of an alias for identification of parents and children in “Parental-Rights Termination Cases and Juvenile Court Cases”, the following is a complete list of all parties to the trial court’s judgment or order appealed from, including the names and addresses of all trial and appellate counsel, as required by Tex. R. App. P. 38.1(a), with abbreviations or fictitious names used as aliases for all parents and minors:

Appellant (Trial Respondent),  
Father of “Miguel” and “Francisco”:

██████████, “Gabriel”, or “Father”

Appellate Counsel for Appellant:

**Yolanda Cortes Mares, Esq.**  
State Bar No. 22079000  
2106 Birdcreek Dr.  
Temple, TX 76502  
Telephone: (254)771-1412  
Facsimile: (254)771-2082  
e-mail: ymares@earthlink.net

Attorney for ██████████, “Gabriel”, or  
“Father” (at De Novo Trial):

**Yolanda Cortes Mares, Esq.**  
State Bar No. 22079000  
2106 Birdcreek Dr.  
Temple, TX 76502  
Telephone: (254)771-1412  
Facsimile: (254)771-2082  
e-mail: ymares@earthlink.net

Appellee (Trial Petitioner):

**Texas Department of Family  
and Protective Services**

Appellate Counsel for Appellee:  
(Lead Counsel)

**Office of General Counsel,  
Texas Department of Family and  
Protective Services**

[REDACTED]

Attorney for Texas Department of Family  
and Protective Services (at Trial):

**County Attorney's Office**

[REDACTED]

Non-Appellant:

**Texas Attorney General**

Non-Appellant (Trial Respondent),  
Mother of the Children:

**“Magdalena” or “Mother”**

Attorney for “Magdalena” or “Mother”  
(at Trial):

[REDACTED]

Non-Appellant (Trial Respondent),  
Father of “Ana”:

**“Carlos”**

Attorney for “Carlos” (at Trial):

[REDACTED]

Child of “Magdalena” and “Gabriel”,  
age 5 years:

**“Miguel”**

Child of “Magdalena” and “Gabriel”,  
age 3 years:

**“Francisco”**

Child of “Magdalena” and “Carlos”,  
age 1 year:

**“Ana”**

Trial Court Judge:

**Honorable** [REDACTED]  
[REDACTED]

Attorney Ad Litem for the Children:

[REDACTED]

Guardian Ad Litem for the Children:



As required by Tex. R. App. P. 9.8 (b)(1)(A), the children will be referred to as the “Children” when referred to jointly and by their fictitious alias names when referred to individually: “MIGUEL”, “FRANCISCO”, and “ANA”, to protect their identity.

As permitted by Tex. R. App. P. 9.8 (b)(1)(B), the parents will be referred to individually by their fictitious alias names: the mother of the Children will be referred to as “MAGDALENA” or “Mother”, the father of “MIGUEL” and “FRANCISCO” will be referred to as “GABRIEL” or “Father”, and the father of “ANA” will be referred to as “CARLOS”, to protect their identity.<sup>1</sup>

The Texas Department of Family and Protective Services will be referred to as “DFPS” or as the “Department” herein.

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<sup>1</sup> The pseudonyms provided in this brief are fictitious alias names to protect the identity of the children so as to comply with Tex. R. App. P. 9.8(b). The parents are also referred to in this brief by their initials so as to comply with Tex. R. App. P. 9.8(b).

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No. [REDACTED]

IN THE COURT OF APPEALS  
FOR THE THIRD JUDICIAL DISTRICT OF TEXAS  
AUSTIN, TEXAS

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[REDACTED]  
Appellant

V.

TEXAS DEPARTMENT OF FAMILY  
AND PROTECTIVE SERVICES,  
Appellee

**APPELLANT’S BRIEF**

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**TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:**

[REDACTED] Respondent in the Trial Court, Father of MIGUEL and FRANCISCO and the Appellant in this Court, respectfully submits this brief in support of his appeal from the De Novo Order Appointing Managing Conservator signed by the Trial Court on May 29, 2020. [REDACTED] is referred to herein as “GABRIEL”.

**PRELIMINARY STATEMENT OF THE CASE / STATEMENT OF FACTS**

This case involves 3 Children: MIGUEL (5 years of age), FRANCISCO (3 years of age), and ANA (1 year of age). Appellant, GABRIEL, is the presumed father of MIGUEL and FRANCISCO. CARLOS is the biological father of ANA pursuant to paternity testing. MAGDALENA is the mother of all the Children. GABRIEL is the only party who has appealed the De Novo Order Appointing Managing Conservator signed by the District Court Judge on May 29, 2020.

The Department removed MIGUEL and FRANCISCO from MAGDALENA on or about October 9, 2018 due to the Department's concerns that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



### **STATEMENT REGARDING ORAL ARGUMENT**

Counsel for Appellant does not request oral argument. Counsel for Appellant hereby gives notice that Appellant waives oral argument in this case based on Counsel's belief that the facts and legal arguments of this case are well represented in this brief and the records filed in this appeal, and believes that the decisional process would not be significantly aided by oral argument. However, Counsel stands ready to appear for argument at this Court's convenience if the Court determines that oral argument would be helpful.

NO. 03-1X-00XXX-CR

[APPELLANT]	§	IN THE COURT OF APPEALS
	§	
v.	§	THIRD JUDICIAL DISTRICT
	§	
THE STATE OF TEXAS	§	SITTING AT AUSTIN, TEXAS

**CERTIFICATE OF COUNSEL**

In compliance with the requirements of *Anders v. California*, 386 U.S. 378 (1967), I, [Name of Attorney], court-appointed counsel for appellant, [Name of Appellant], in the above-referenced appeal, do hereby verify, in writing, to the Court that I have:

1. notified appellant that I filed a motion to withdraw as counsel with an accompanying *Anders* brief, and provided a copy of each to appellant;
2. informed appellant of his right to file a pro se response identifying what he believes to be meritorious grounds to be raised in his appeal, should he so desire;
3. advised appellant of his right to review the appellate record, should he wish to do so, preparatory to filing that response;
4. explained the process for obtaining the appellate record, provided a *Motion for Pro Se Access to the Appellate Record* lacking only appellant's signature and the date, and provided the mailing address for this Court; and
5. informed appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous.

Respectfully submitted,

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Attorney for Appellant

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WILLIAM  
**STRUNK** JR.  
A N D  
E.B. **WHITE**

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*"...still a little book, small enough and important enough  
to carry in your pocket, as I carry mine."*

— Charles Osgood

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*The*  
**ELEMENTS**  
*Of*  
**STYLE**

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**FOURTH EDITION**

FOREWORD BY ROGER ANGELL

