

# Basic Rules & Resources in a CPS Appeal

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**Appellate Committee**

**Child Protection Law Section**

## Question #1:

What FREE resources can be accessed online through the appellate court system that can help a person with their first CPS appeal?

ANSWER #1: see Texas Supreme Court website at  
[txcourts.gov/supreme](http://txcourts.gov/supreme)

1. “Rules & Forms” provides:

1. Texas Rules of Civil Procedure
2. Texas Rules of Appellate Procedure
3. Rules of Evidence
4. Texas Disciplinary Rules of Professional Conduct
5. Local published rules of trial and appellate court

.ANSWER 1: continued....

2. **Courts** at:

- \* **Case Search** find opinions/briefs by:  
attorney, filing date, case name, trial court
- \* **Document Search** find documents by:  
word search
- \* **Oral Arguments** links to recordings  
of past oral arguments
- \* **Attorney Portal** find your appeal records

.ANSWER 1: continued....

3. “Self Help Resources” at:

**\*find forms:**

**motions for extension of time**

**Petition for Review template**

**Motion for Rehearing**

ANSWER 1: continued....

4. **“Organizations”** at  
\***“Children’s Commission”**  
at **“Reports & Resources”**  
find: Took Kits for representing DFPS, parents

4. **“Organizations”** at  
**“Agencies”**  
at **“State Law Library”** find:  
Constitution (state and federal)  
Statutes (state and federal)  
Must visit in person for Westlaw/Lexus

## Question #2:

How should one communicate with the appellate court and for what type questions?

## Answer Question 2:

Through the clerk's office by phone or in person – not generally by email or fax. Appropriate questions typically include information about filing dates, attorney portal access issues, filing issues, record issues, or submission dates. Also, telling clerk about a mandamus filing – especially when emergency before a weekend or holiday.

See TRAP 9.6

## Question #3:

What resource should be consulted as soon as possible by trial and appellate attorney after judge renders decision at trial?

# ANSWER #3: the CLIENT

To Confirm:

1. Client's Desired Action. TRAP 25.1(d)(3)(in n/a); DR101b
2. Client's standing for desired action.
3. Indigence Issues. TRAP 25.1(d)(8) (in n/a if presumed)

NOTE:

- 1) indigence continues unless "material & substantial change in parent's financial circumstance." TFC 107.013(e)
- 2) if indigence not previously found, get affidavit/order.TFC107.013d
- 3) include statement in original/amended notice of appeal.

## Question #4:

Name the next most important resource to consult as soon as possible after judgment by the trial and appellate attorney to protect appellate rights?

## Answer #4: trial court's file/Clerk's Record)

Review entire record for necessary **FACT determinations concerning:**

- **F**inality
- **A**ccuracy
- **C**ondition-appeal
- **T**ime-issues

## **F**inality:

1. Is trial court judgment FINAL?
2. Is trial court's plenary jurisdiction FINAL?

## **A**ccuracy

1. Is trial court judgment consistent with rendition?
2. Are names & identities of parties correct?
3. Are judgment decisions clear and enforceable?
4. Is a document missing or lost?

## **C**ondition-appeal

1. Was indigence addressed with order
2. Was timely order signed for appellate counsel if appropriate?
3. Did notice of appeal reflect indigence?
4. Was notice of appeal signed by intended appellate counsel?
5. Was order signed on timely filed 329b motion?
6. Is record accurate? Are documents missing?

## **T**ime issues analysis

1. Was trial commencement under TFC 263.401 or 263.402 met?
2. Was Notice of Appeal timely?

**Question 5:** What important time-issue should a trial attorney discuss with newly appointed counsel replacing him/her in a CPS case?

# Answer#5: Jurisdictional Issues

see TFC 263.405 & 263.401, TRAP 26.3 & TRCP 329b

## Jurisdictional Rules Before Appellate Court

1. TFC 263.405: Accelerated Appeal
2. TRAP 26.3(b): 20 days after Judgment signed
3. TRAP 26.3: 15 day extension process for notice of appeal

## Jurisdictional Rules Before Trial Court

1. TFC 263.401: trial court jurisdiction retained for limited time  
unless proper extension or monitored return
2. TRCP 329b: trial court's plenary power to act:
  - 329b(b): must file m/n/t 30 days of signed judgment
  - 329b(d): no timely m/n/t, 30 days plenary jurisdiction
  - 329b(c): no order on m/n/t, overruled 75 days after signed  
judgment & plenary jurisdiction expires 30 days thereafter (105 total)

## Question #6:

Is trial counsel responsible to check court's file if trial court indicates a new attorney will be appointed for appeal and, what rule controls in that determination?

**Answer #6: yes**

**Look for new appointment order**

Trial attorney remains responsible unless and until

- (1) order signed that removes and orders substitution consistent with TFC 107.016
- (2) and as needed to discharge responsibilities under Disciplinary Rules for Professional Conduct.

# TFC 107.016(2)

An attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

A. the date the suit affecting the parent-child relationship is dismissed;

B. the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or

C. the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

# Relevant Disciplinary Rules

Terminating Representation: DR 1.16

c. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

d. Upon termination ... a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled...

**Comment 9: even if unfairly discharged, lawyer must take all reasonable steps to mitigate consequences to client**

**Question #7:** what rules should be consulted in securing accurate reporter's record

# Answer to 7:

TRAP 35.3: Reporter's Duty to File Record if

- \*notice of appeal filed

- \*written request

- \*indigence established or payment/arrangements

TRAP 36.3 Correcting the Record

- \*agreement or, if not, trial court order

## Question 8

What are an attorney's responsibility in a CPS appeal to secure a timely and accurate record based on the rules of appellate procedure?

## Answer to Question 8:

1. Secure timely orders concerning indigence, if proper, and include in notice of appeal to trigger clerk and reporters aware of their duties under TRAP 35.3(a)(2)&(b)(3).
2. Timely request reporter's per TRAP 34.6(b) & 35.3(b)(2)
3. Ensure all documents needed for clerk's record included by designating per TRAP 34.5

# Question 9: What rules should be considered in preparing brief in CPS appeal?

TRAP 9.1 – signing,

TRAp 9.2 - filing,

TRAP 9.3 – copies

TRAP 9.4 – form/length

TRAP 9.5: service

TRAP 9.8 protecting minor's identity

TRAP 9.9 sensitive data

TRAP 38.1-38.9: Brief contents, appendix, response and reply, amendment/supplementation, effect of failing to file timely and construction of briefs.

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