

*What in-house counsel
need to know about...*

How Technology Is Changing Appellate Practice

Don Cruse
Blake Hawthorne

Executive Summary

- Courts are becoming transparent in ways that are fast, free, and extremely detailed.
- With that, court-watchers can “study the tribunal” in ways not possible before.
- *Amici* can know when their resources can help the Court reach a good result.
- The shift to e-briefs could change what you should expect from a quality brief.

Transparency

Courts are publishing better information about their internal decision process, faster and more conveniently than ever before.



In the 2000s, online information about the Texas Supreme Court has multiplied



online docket and casemail



200

downloadable audio



200

webcasts



200

transcripts



200
only in argued cases



200
requested with merits briefs



2010
mandatory with every petition &

Webcasts of oral argument



Setting expectations
for how appeals
differ from trials

Learning what
questions concern
the Justices

Even little things, like publishing the conference calendar, make a big difference



That transparency has some consequences...

The Google logo is displayed in its characteristic multi-colored font: blue 'G', red 'o', yellow 'o', blue 'g', green 'l', and red 'e'.

Google Search

I'm Feeling Lucky

Inconsistent
positions

Employees
by name

Awkward
facts

Studying the Tribunal

Having more information can enable smarter appellate strategies and more effective appellate advocacy -- especially in courts with discretionary jurisdiction, such as the Texas Supreme Court.

“The job of an appellate argument is to win a particular case before a particular tribunal, for a particular client. And, since that is so, it begins with the tribunal. Long before the case comes into your office, you should have been studying that tribunal...”

Karl Llewellyn
A Lecture on Appellate Advocacy (1962)



“We have tried to become as transparent as we can . . . so that you’ve got a pretty good idea of what our docket is...”

“Now you can be an advocate there, and say that this is a better case... or that this case has complexities... But become a student of the docket.”

Chief Justice Wallace Jefferson
An Evening with the Supreme Court of Texas (2010)





Opinion Statistics
Fiscal Year 2009
Sept. 2008 through Aug. 2009
Click on a number to view details.

Judge	Majority	Pro-Carson	Concurring	Dismissing	Concurring & Dismissing	Other
Brewer	10	0	4	1	0	1
Crews	10	0	0	2	0	0
Elrod	7	1	2	1	0	0
Jefferson	10	1	2	1	0	0
Johnson	12	4	2	2	0	0
Madala	7	3	0	1	0	0
O'Neill	8	1	0	4	0	0
Walker	5	4	2	2	0	1
Wilentz	0	2	2	2	0	0
By agreement						
Waldrop	1	0	0	0	0	0
Total	75	20	17	11	0	2



7:39 PM 78% (M)

DocketDB: Recent Activity

docketdb.com/recent/brief

DocketDB

Recent Activity Docket Status Archived Filings

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Recent Requests for Full Briefing

Cases Recently In the News Recently Filed Petitions **Recent Requests for Full Briefing**

Requests for briefing on the merits within the past 31 days

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June 18, 2010

NIKONA MEDICAL CLINIC, P.A. v. LINDA DIANE TUCKER AND MYRLE TUCKER, No. 10-0066.
5 days since full briefing was requested on June 18, 2010
1 OOA Opinion 3 Briefs Online

IN RE JEFFREY GREENSTEIN AND CHARLES H. WILK, No. 10-0216.
5 days since full briefing was requested on June 18, 2010
Fifth Amendment, discovery stay, ongoing criminal case, stays w/it
1 OOA Opinion 3 Briefs Online 1 Amicus

BASITH GHAZALI, M.D. v. PATRICIA BROWN, No. 10-0232.
5 days since full briefing was requested on June 18, 2010
1 OOA Opinion 2 Briefs Online

IN RE MICHAEL WOLFE, No. 10-0294.
5 days since full briefing was requested on June 18, 2010
Rule 202, public officials, stays w/it



7:22 PM 27% (W)

TX Supreme Court: Cases Being Set for Oral Argument

docketdb.com/stages/show/Granted

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“Where Do Cases Stand on the Texas Supreme Court Docket?”

Petition Stage	Briefing on the Merits	Oral Argument	Rehearing
Recently Filed Petitions (No Response Yet Filed)	12th Request for Clarifying Briefing	Cases Granted for Oral Argument	Recently Input Minutes for Rehearing
Court Has Requested a Response	12th Request - 12th Day - Study Meeting	Cases Submitted After Oral Argument	12th Day 45-60 Days
Response Filed (Less Than 30 Days)	12th Request 30-45 Days - Conference	12th Request 45-60 Days - Conference	12th Day 60-75 Days
Response on File 30-75 Days Conference	12th Request 75-90 Days	12th Request 90-105 Days - Rehearing Decided	12th Day 105-120 Days
Long Pending Petitions Still in Submission	12th Request 105-120 Days - Rehearing Decided	Recently Decided Petitions and Cases	

Cases Being Set for Oral Argument

What does it mean to be at this stage?

There are 19 petitions at this point in the process.

AARON GLENN HAYGOOD v. MARGARITA GARZA DE ESCABEDO, No. 09-0377.
 75 days since review was granted on April 8, 2010.
 1 COA Opinion 7 Briefs Online 3 Amicus

AMERICAN HOME ASSURANCE COMPANY AND ILLINOIS NATIONAL INSURANCE COMPANY v. MARYLAND CASUALTY COMPANY, No. 09-0226.
 28 days since review was granted on May 28, 2010.
 additional insured, COI policy, settlement without consent, issue est.

Amicus Practice

It's always been possible to use a well-placed amicus brief to help the Court reach the right ruling on an issue that matters to you. The trick has been knowing which cases present that opportunity.

Timing matters. *When* you file can have a big impact.

The screenshot shows the DocketDB website interface on an iPad. The browser address bar displays 'docketdb.com/amicus/stages/'. The page title is 'Cases with the Most Amicus Appearances Arranged by Stage on the Court's Docket'. Below the title are three filter buttons: 'Who is Filing Amicus Briefs?', 'Which Cases Have Attracted the Most Amicus?', and 'What Stage Are These Cases At?'. The current filter is set to 'PFR Stage', showing '4 amicus filers in 4 cases at this stage'. The list of cases includes:

- CITY OF AUSTIN v. HARRY M. WHITTINGTON, ET AL., No. 10-0206.**
20 days since a response to the petition was filed on June 3, 2010.
1 COA Opinion 3 Briefs Online 1 Amicus
- CENTOCOR, INC. v. PATRICIA HAMILTON AND THOMAS HAMILTON, No. 10-0223.**
20 days since the petition was filed on May 12, 2010.
1 COA Opinion 3 Briefs Online 1 Amicus
- THE FINANCE COMMISSION OF TEXAS, THE CREDIT UNION COMMISSION OF TEXAS AND TEXAS BANKERS ASSOCIATION v. ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), VALERIE NORWOOD, ELISE SHOWS, MARYANN ROBLES-VALDEZ, BOBBY MARTIN, PAMELA COOPER AND CARL, No. 10-0441.**
13 days since a response to the petition was filed on June 10, 2010.
2 COA Opinions 5 Briefs Online 1 Amicus
- CITY OF LAREDO v. HILDA NEGRETE, No. 10-0183.**
14 days since a response to the petition was filed on June 8, 2010.
1 COA Opinion 2 Briefs Online 1 Amicus

The next stage listed is 'BOM Stage'.

E-Briefs

The big revolution is in how judges and their law clerks read briefs. As the PDF file becomes the "real" brief, appellate lawyers will have to be conscientious about making briefs that are helpful for the Court -- and more persuasive for the client.

“Paper or Plastic?”



Now, the PDF file is
becoming the “real” brief



10-0182.pfr.pdf

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