

Memorandum



To: Supreme Court Advisory Committee

From: Appellate Rules Subcommittee

Date: August 20, 2020

Re: May 18 Referral Relating to Appellate Briefing Practice

I. Matter referred to subcommittee

The Court's May 18, 2020 referral letter and Chairman Babcock's May 20 letter refer the following matter to our committee:

Briefing Rules. The Court asks the Committee to consider whether changes are needed to improve appellate briefing practice and specifically asks the Committee to consider whether to:

- remove paper-copy requirements;
- remove the requirement to include the court of appeals judgment in the petition appendix;
- add a reasons-to-grant section in the petition and brief;
- remove or limit the statement of jurisdiction in the petition and brief;
- create a standardized record citation format to allow for automated hyperlinking;
- add a requirement to include argument-preservation citations; and
- maintain the certificate-of-service requirement for e-filed documents.

No materials were provided with the referral.

II. Relevant rules

The items for consideration in the referral implicate several of the Rules of Appellate Procedure. TRAP 9.3(b) imposes the paper copy requirement for document electronically filed with the Texas Supreme Court and the Court of Criminal Appeals. TRAP 9.5(d) and (e) govern certificates of service in appellate courts. TRAP 53.2 mandates the contents of a petition for review and appendix. TRAP 55.2 sets out the contents of a petitioner's brief on the merits. The full text of these provisions is provided in Appendix A.

III. Discussion and Recommendation

The referred items will be addressed in a different order than listed in the referral letter. Four of the items involve the mechanics of filings and will be addressed first. The remaining three items address the substance of filings and will be addressed last.

A. Whether to remove paper-copy requirements.

TRAP 9.3(b)(2) requires a party e-filing documents in the Supreme Court and Court of Criminal Appeals to also file paper copies with those courts: “Paper copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.” In contrast, TRAP 9.3(a)(2) states that paper copies of e-filed documents are not generally required in the court of appeals: “Unless required by local rule, a party need not file a paper copy of an electronically filed document.”

Blake Hawthorne, Clerk of the Supreme Court, has confirmed that the Court no longer requires paper copies of e-filed documents. In an email, Blake stated: “We no longer require paper copies, so I think the rule needs to be updated. People still call and are confused because the rule hasn’t changed.” Blake also volunteered to contact the Court of Criminal Appeals to see whether they still require paper copies and, if so, whether they want to continue.

Recommendation. According to Blake, the Court of Criminal Appeals is considering whether it still wants paper copies, no final determination has been made, but it seems likely the court will want to continue to receive paper copies. So here are two alternative recommendations:

Assuming the Court of Criminal Appeals wants to continue receiving paper copies, amend TRAP 9.3(b)(2) to delete the requirement to file paper copies of e-filed documents only in the Supreme Court and to parallel TRAP 9.3(a)(2) applicable to the courts of appeals, as follows:

9.3. Number of Copies

(b) Supreme Court and Court of Criminal Appeals.

- (1) Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a

motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

- (2) Electronically Filed Document. Paper copies of each document that is electronically filed with the ~~Supreme Court or the~~ Court of Criminal Appeals must be mailed or hand-delivered to the ~~Supreme Court or the~~ Court of Criminal Appeals, ~~as appropriate,~~ within three business days after the document is electronically filed. The number of paper copies required shall be determined, ~~respectively,~~ by order of the ~~Supreme Court or the~~ Court of Criminal Appeals. A party need not file a paper copy of an electronically filed document in the Supreme Court.

Assuming instead the Court of Criminal Appeals no longer wants paper copies, amend TRAP 9.3(b)(2) to delete the requirement to file paper copies of e-filed documents and to parallel TRAP 9.3(a)(2) applicable to the courts of appeals, as follows:

9.3. Number of Copies

- (b) Supreme Court and Court of Criminal Appeals.

- (1) Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.
- (2) Electronically Filed Document. ~~Paper copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals. A party need not file a paper copy of an electronically filed document.~~

B. Whether to remove the requirement to include the court of appeals' judgment in the petition appendix.

TRAP 53.2(k)(1)(C) requires that the appendix to the petition for review contain "the opinion and judgment of the court of appeals." While petitioners routinely include the court of appeals' opinion in the appendix, they not infrequently omit the court of appeals' judgment, which is a separate document. Because the judgment is required, petitions are returned for

correction when not included. While a return for correction does not affect the date of filing, it does slow down the processing of the petition.

The subcommittee asked for input from Blake Hawthorne, Clerk of the Supreme Court, who stated that: “Court of appeals judgments are almost always available online and staff attorneys say they no longer need it in the petition. It causes a lot of returns for corrections because many non-appellate practitioners and their staff don’t understand the difference between the opinion and the judgment.”

If the rule were changed to delete the mandatory inclusion of the court of appeals’ judgment in the appendix, petitioners would always be free to include it as optional content under TRAP 53.2(k)(2) (“Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.”).

Pragmatically, then, it makes sense to no longer mandate inclusion of the court of appeals’ judgment in the appendix. The subcommittee was unanimous on this. But some members of the subcommittee did express regret at its passing. As subcommittee member Evan Young observed, “But it really is the judgment that is the basis for the appeal, not the opinion; there is something discordant to me about omitting the judgment in a petition whose whole purpose is to review that very judgment. I nonetheless do not oppose the recommendation to exclude it as a mandatory part of the appendix given the foregoing.”

Recommendation. Amend TRAP 53.2(k)(1) to delete the required inclusion of the court of appeals’ judgment in the appendix to the petition for review, as follows:

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

(k) Appendix.

(C) the opinion ~~and judgment~~ of the court of appeals; and

C. Whether to maintain the certificate-of-service requirement for e-filed documents.

TRAP 9.5(d) and (e) mandate proof of service and specify the contents of a certificate of service for all appellate court filings. Many Texas appellate courts are using the automated certificate of service generated by the e-filing system. The automated certificates shows who has been served

through the e-filing portal. The automatic certificate of service has been turned on by most Texas appellate courts and an increasing number of trial courts, including:

- Supreme Court
- Criminal Court of Appeals
- 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 11th, 13th, 14th Courts of Appeals
- Collin DC
- Bowie DC
- Nolan DC
- Mitchell DC
- Fisher DC
- Williamson CC/DC
- Brewster DC
- Culberson DC
- Jeff Davis DC
- Hudspeth DC
- Presidio DC
- Travis DC
- Dallas CC/DC

The subcommittee asked for input from Blake Hawthorne, Clerk of the Supreme Court. Blake confirmed that the automated certificate of service accurately states who has been served through the eFiling system and is working well:

You may have seen my tweets promoting this idea. I took this idea through the Judicial Committee on Information Technology and that group signed off on the it before the technology was deployed. Almost all of the appellate courts have turned on the automated certificate of service and it is working well. A page is simply inserted at the end of each document filed. It is also included on documents that are served, but not filed, through eFileTX. It lists the name and the email address of each person actually served. Future improvements will include a hyperlink that shows the online report with the status of delivery (i.e. you'll actually be able to see if and when the document was opened by clicking on the hyperlink).

One thing that the automated certificate has demonstrated is that the certificates that attorneys include are often not accurate. They say they served everyone when in fact they did not serve anyone. Or they say they served all counsel when in fact they did not. The automated certificate is more accurate and will be more convenient if attorneys no longer have to create a certificate. The federal courts have already made this change.

Recommendation. Amend TRAP 9.5(d) and (e) to delete the certificate of service requirement for e-filed documents, as follows:

9.5. Service

(d) Proof of Service and Certificate of Service.

(1) Documents Served Electronically. Proof of service and a certificate of service are not required for a document filed electronically in an appellate court and served electronically.

(2) Documents Not Served Electronically.

(A) A document ~~presented for filing~~ **not served electronically** must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.

(e) (B) Certificate Requirements. A certificate of service must be signed by the person who made the service and must state:

(4i) the date and manner of service;

(2ii) the name and address of each person served; and

(3iii) if the person served is a party's attorney, the name of the party represented by that attorney.

D. Whether to create a standardized record citation format to allow for automated hyperlinking.

The Fifth Circuit requires that all filings use a uniform citation to the appellate record to permit automatic hyperlinking using the court's technology. Unlike in Texas appeals, the appellate record in the Fifth Circuit combines both the clerk's record and the reporter's record in a single file with pages consecutively numbered.

The appellate record in Texas consist of multiple volumes of the reporter's transcript and also multiple volumes of the clerk's documents. In Texas appellate courts, there is no standard record citation form, and briefs use a wide variety of citation approaches. Currently, there is no state court technology for automatic hyperlinking to the record. A party must manually add hyperlinks and record excerpts, and hyperlinking to the record is optional.

The subcommittee asked for input from Blake Hawthorne, Clerk of the Supreme Court, who confirmed that automatic hyperlinking is not currently feasible:

I think [one of the justices] suggested the standardized record citation format thinking that was all that was needed for us to be able to hyperlink to the record like the 5th Circuit does. The trouble is that the technological solution doesn't exist yet. So while this would need to be done to be able to hyperlink, we still won't be able to do this even when there is a standard format. I'm certainly not opposed to it though as it will eventually need to be done in order to create hyperlinks. I just wish there was some work going on on the technology side of this.

So, while the TRAPs could impose a uniform record citation requirement, there would be two problems: (1) it would not permit hyperlinking at this time because there is no technology to support it; and (2) it is unclear whether any uniform format instituted now would be compatible with whatever technology is eventually developed. It might be useful to the appellate courts to have consistent record citations in briefs notwithstanding these issues. If a uniform record citation were adopted, the format should not include spaces that would increase the word count of a document. For example, 2.CR.24 or 2CR24 counts as one word but 2 CR 24 counts as three words. However, any format developed now might have to be changed when the technology is in place to automatically hyperlink to the record.

Recommendation. The subcommittee agreed that it would be better to wait for technology to catch up. The subcommittee urges the Office of Court Administration to explore options for developing the technology necessary for Texas appellate courts to be able to automatically hyperlink to the record and further encourages OCA to launch a pilot project to further that goal.

E. Whether to remove or limit the statement of jurisdiction in the petition and brief.

TRAP 53.2(e) and TRAP 55.2(e) require that the petition for review and petitioner's brief on the merits include a Statement of Jurisdiction that states "without argument, the basis of the Court's jurisdiction."

The Court's jurisdictional statutes were amended in 2017. The bases for the Court's jurisdiction are much simpler now than they were at the time TRAP 53.2 and 55.2 were adopted. The Court's primary jurisdictional statute, Tex. Gov't Code § 22.001, which previously listed multiple grounds for the Court's jurisdiction, such as dissent and conflict, now only contains a single basis – the case presents an issue of importance to the jurisprudence of the State. In addition, former Tex. Gov't Code § 22.225 made certain cases final in the court of appeals, including appeals from interlocutory trial court orders. Those limitations were deleted from Section 22.225 in 2017 and the Supreme Court may exercise jurisdiction under the 22.001 importance standard. There remain a handful of special statutes that grant the Court jurisdiction in other situations – such as direct appeals from the trial court and original jurisdiction over some types of cases. These appeals are governed by TRAP 57, which sets out the procedures for the parties to brief the basis for the Court accepting (or rejecting) jurisdiction.

The effect of the 2017 amendments to the Court’s jurisdictional statutes thus made traditional appeals from a court of appeals within the Court’s discretionary jurisdiction. Because there is only one basis for jurisdiction, and that basis is discretionary, the issue is not whether the Court has jurisdiction. It does. The question is whether it will accept discretionary jurisdiction over the case based on importance of the issues.

Many practitioners use the Statement of Jurisdiction to argue whether the issues are in fact important and whether the Court should accept the case. The Statement of Jurisdiction is not included when determining the document’s word count for purposes of the limits in TRAP 9.4. So it is like a Free Space in Bingo.

Recommendation. The Statement of Jurisdiction is no longer necessary and should be deleted as a requirement. TRAP 53.2(e) and 55.2(e) should be deleted and subsequent sections re-lettered. The reference to Statement of Jurisdiction should also be deleted from respondents’ filings – the response to the petition for review and respondent’s brief on the merits. TRAP 53.3(d) and TRAP 55.3(d) provide that “a statement of jurisdiction should be omitted unless the petition fails to assert valid grounds for jurisdiction.” Those sections should be deleted and subsequent sections re-lettered.

<i>F. Whether to add a reasons-to-grant section in the petition and brief.</i>

The most critical function of a petition for review is to convince the Supreme Court to exercise its discretionary jurisdiction and grant review because the issue is of importance to the State. Nothing, however, in TRAP 53.2 requires the petition to expressly make that argument.

Experienced practitioners routinely do this. As an example, some practitioners have replaced the heading “Summary of Argument” with “Summary of the Argument: Review is Warranted” or “Summary of the Argument: The Court Should Grant Review” or have added an “Introduction” section at the beginning of the brief for that purpose. Similarly, some practitioners representing respondents use the heading “Summary of the Argument: Review is Not Warranted” or a responsive “Introduction” section for that purpose.

The subcommittee discussed a variety of options. The consensus was that a “Reasons to Grant” section would be very useful in the petition for review. But the subcommittee viewed a discussion of reasons to grant review as largely duplicative of the summary of the argument. It would also add more words to the word count. The subcommittee also agreed that the summary of the argument is not that useful if there is already a summary in the Reasons to Grant and also because the petition is quite short, the headings provide a summary, and the summary of the argument is largely repetitive.

The subcommittee further agreed that the new reasons to grant section should be included only in the petition and not merits briefing because they should have different focuses. While the petition for review focuses on whether the issues in the case are grantworthy, the briefing should be more focused on the merits of the substantive arguments.

Recommendations: (1) Delete the requirement for a summary of argument in TRAP 53.2(h); (2) add a new introduction section on reasons to grant and retitle the argument section; (3) as previously recommended, delete the statement of jurisdiction; (4) re-letter as needed; (5) add new exception in TRAP 53.3 to require respondent to include a response to the reasons to grant section; and (6) change TRAP 55.2 only to delete the statement of jurisdiction..

TRAP 53.2 would be amended as follows:

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel.
- (b) *Table of Contents.* The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.
- (c) *Index of Authorities.* The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.
- (d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:
 - (1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);
 - (2) the name of the judge who signed the order or judgment appealed from;
 - (3) the designation of the trial court and the county in which it is located;
 - (4) the disposition of the case by the trial court;
 - (5) the parties in the court of appeals;
 - (6) the district of the court of appeals;
 - (7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
 - (8) the citation for the court of appeals' opinion; and

(9) the disposition of the case by the court of appeals, including the disposition of any motions for rehearing or en banc reconsideration, and whether any motions for rehearing or en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.

(e) *Statement of Jurisdiction.* ~~The petition must state, without argument, the basis of the Court's jurisdiction.~~

~~(f)~~ *Issues Presented.* The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

~~(f)~~ *Introduction and Statement of Reasons to Grant.* The petition must contain an introduction stating the reasons the court should grant review.

(g) *Statement of Facts.* The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

(h) *Optional Summary of the Argument.* The petition may include a summary of the arguments made in the body of the petition. ~~must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary must not merely repeat the issues or points presented for review.~~

(i) *Reasons to Grant Argument.* The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.

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

(k) *Appendix.*

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

- (A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;
- (B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;
- (C) the opinion ~~and judgment~~ of the court of appeals; and
- (D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

The subcommittee further recommends a new exception for respondents in TRAP 53.3 with subsequent sections re-lettered:

- (c) include a statement of the reasons the Court should deny review;

Finally, TRAP 55.2(e), statement of jurisdiction, should be deleted and following sections re-lettered.

G. Whether to add a requirement to include argument-preservation citations.

In the subcommittee's experience, preservation is not an issue in most cases in the Supreme Court and, when it is, the Court is very liberal in finding preservation. Citations to the record to show where an issue was preserved is not that simple. The obligation to preserve varies depending on the burden of proof, the nature of the trial court judgment (jnov vs. non-jnov, for example), whether the party was appellant or appellee in the court of appeals, whether the issue in the court of appeals was a responsive issue or a separate attack on the judgment, etc. So the citation standing alone or the absence of a citation may not provide that much information without knowing all of that context. Currently, if there is a preservation issue, it is the obligation of the respondent to point it out. That seems more efficient than requiring the information in every case when it is rarely an issue. The subcommittee also thought that adding this section would invite more (and mostly unnecessary) disputes about preservation.

Recommendation. No change. If, however, a change is made to require citation to where the issue was preserved, add that requirement to the issues statement to exclude it from the word count.

Appendix A: Relevant Rules

9.3. Number of Copies

(b) *Supreme Court and Court of Criminal Appeals.*

(1) Document Filed in Paper Form. If a document is not electronically filed, a party must file the original and 11 copies of any document addressed to either the Supreme Court or the Court of Criminal Appeals, except that in the Supreme Court only an original and one copy must be filed of any motion, response to the motion, and reply in support of the motion, and in the Court of Criminal Appeals, only the original must be filed of a motion for extension of time or a response to the motion, or a pleading under Code of Criminal Procedure article 11.07.

(2) Electronically Filed Document. Paper copies of each document that is electronically filed with the Supreme Court or the Court of Criminal Appeals must be mailed or hand-delivered to the Supreme Court or the Court of Criminal Appeals, as appropriate, within three business days after the document is electronically filed. The number of paper copies required shall be determined, respectively, by order of the Supreme Court or the Court of Criminal Appeals.

9.5. Service

9.5. Service

(a) *Service of All Documents Required.* At or before the time of a document's filing, the filing party must serve a copy on all parties to the proceeding. Service on a party represented by counsel must be made on that party's lead counsel. Except in original proceedings, a party need not serve a copy of the record.

(b) *Manner of Service.*

(1) Documents Filed Electronically. A document filed electronically under Rule 9.2 must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under subparagraph (2).

- (2) Documents Not Filed Electronically. A document that is not filed electronically may be served in person, by mail, by commercial delivery service, by fax, or by email. Personal service includes delivery to any responsible person at the office of the lead counsel for the party served.

(c) *When Complete.*

- (1) Service by mail is complete on mailing.
- (2) Service by commercial delivery service is complete when the document is placed in the control of the delivery service.
- (3) Service by fax is complete on receipt.
- (4) Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

(d) *Proof of Service.* A document presented for filing must contain a proof of service in the form of either an acknowledgment of service by the person served or a certificate of service. Proof of service may appear on or be affixed to the filed document. The clerk may permit a document to be filed without proof of service, but will require the proof to be filed promptly.

(e) *Certificate Requirements.* A certificate of service must be signed by the person who made the service and must state:

- (1) the date and manner of service;
 - (2) the name and address of each person served; and
 - (3) if the person served is a party's attorney, the name of the party represented by that attorney.
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53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel.
- (b) *Table of Contents.* The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.
- (c) *Index of Authorities.* The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.
- (d) *Statement of the Case.* The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:
 - (1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);
 - (2) the name of the judge who signed the order or judgment appealed from;
 - (3) the designation of the trial court and the county in which it is located;
 - (4) the disposition of the case by the trial court;
 - (5) the parties in the court of appeals;
 - (6) the district of the court of appeals;
 - (7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
 - (8) the citation for the court of appeals' opinion; and
 - (9) the disposition of the case by the court of appeals, including the disposition of any motions for rehearing or en banc reconsideration, and whether any motions for rehearing or en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.
- (e) *Statement of Jurisdiction.* The petition must state, without argument, the basis of the Court's jurisdiction.
- (f) *Issues Presented.* The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

(g) *Statement of Facts.* The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

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

(i) *Argument.* The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.

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

(k) *Appendix.*

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

(A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;

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

(C) the opinion and judgment of the court of appeals; and

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

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

55.2. Petitioner's Brief on the Merits

The petitioner's brief on the merits must be confined to the issues or points stated in the petition for review and must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel.
- (b) *Table of Contents.* The brief must have a table of contents with references to the pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.
- (c) *Index of Authorities.* The brief must have an index of authorities arranged alphabetically and indicating the pages of the brief where the authorities are cited.
- (d) *Statement of the Case.* The brief must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:
 - (1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);
 - (2) the name of the judge who signed the order or judgment appealed from;
 - (3) the designation of the trial court and the county in which it is located;
 - (4) the disposition of the case by the trial court;
 - (5) the parties in the court of appeals;
 - (6) the district of the court of appeals;
 - (7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;
 - (8) the citation for the court of appeals' opinion, if available, or a statement that the opinion was unpublished; and
 - (9) the disposition of the case by the court of appeals.
- (e) *Statement of Jurisdiction.* The brief must state, without argument, the basis of the Court's jurisdiction.
- (f) *Issues Presented.* The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. The phrasing of the issues or points need not be identical to the statement of issues or points in the petition for review, but the brief may not raise additional issues or points or change the substance of the issues or points presented in the petition.

(g) *Statement of Facts.* The brief must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The brief must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

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

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

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