CAPITAL PUNISHMENT APPELLATE GUIDE BOOK

CONTENTS

INTRODUCTION **APPELLATE PROCESS** 2

PART ONE **TRIAL AND DIRECT APPEAL** 3

- Trial 3
- Direct Appeal: Texas Court of Criminal Appeals 3
- Direct Appeal: United States Supreme Court 4

PART TWO **STATE HABEAS CORPUS PROCEEDINGS** 5

PART THREE **FEDERAL HABEAS CORPUS PROCEEDINGS** 6

- Federal District Court 6
- United States Court of Appeals for the Fifth Circuit 7
- United States Supreme Court 8
- Appellate Procedure for Capital Litigation Chart 9

PART FOUR **EXECUTIVE CLEMENCY** 10

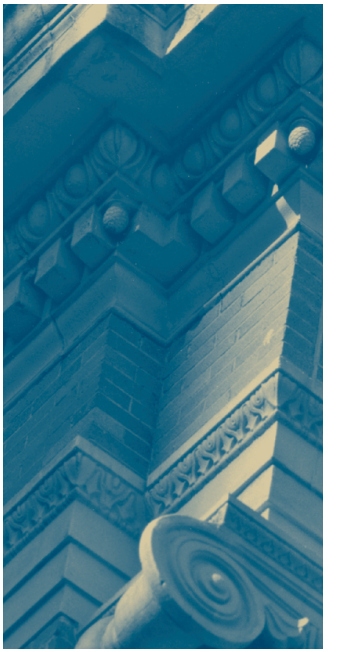
PART FIVE **EXECUTION** 11

PART SIX **POST-EXECUTION** 12

THE APPELLATE PROCESS

After a defendant is convicted of capital murder and sentenced to death at trial, the appellate process begins. A capital conviction is normally reviewed in (appealed to) both state court and federal court. The district attorney's office that prosecuted the case at trial represents both the State and victim's interests in state court. In federal court, the Office of the Attorney General represents both the State's and victim's interests. The following is a brief explanation of the steps in the appellate process. The explanation assumes that the conviction and death sentence are affirmed at each stage of the process. If, at any given stage, either the conviction or sentence is reversed, a retrial or resentencing may be required. In any event, every case is different, and some cases may involve more appeals than others. The circumstances under which either the state or the federal courts will consider claims raised in second or successive *habeas* petitions (appeals) are extremely limited.

PART ONE
TRIAL & DIRECT APPEAL



TRIAL

A capital murder prosecution begins when the grand jury hands down an indictment charging a defendant with capital murder. The trial, which occurs in a Texas district court, proceeds in two phases. During the first phase of the trial, called the guilt/innocence phase, the jury must decide whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of capital murder. If the jury finds the defendant guilty, the trial proceeds to the punishment phase, during which the jury answers special punishment issues. The jury's answers to the special issues determine whether the defendant is sentenced to death or to life imprisonment.

DIRECT APPEAL - TEXAS COURT OF CRIMINAL APPEALS

A defendant sentenced to death is entitled to an automatic appeal to the Texas Court of Criminal Appeals, the highest court of criminal jurisdiction in Texas. At this point, the defendant is called "the appellant," and the State is called "the appellee." The record of the trial, including all documents filed in the trial court, evidence presented at trial, and the written record of all the trial testimony, is compiled and filed in the Court of Criminal Appeals. The defendant's (appellant's) attorney files a brief, in which it is argued that error occurred during the trial and that the defendant's conviction and/or sentence should be reversed. The district attorney's office that prosecuted the case at trial files the State's (appellee's) brief responding to the claims (or grounds for error) in the defendant's brief. In most cases, there is an oral argument before the Court of Criminal Appeals.

The Court of Criminal Appeals reviews the briefs, considers the written and oral arguments advanced by each side, and issues an opinion that addresses each of the defendant's claims. Based on its resolution of the claims, the court affirms or reverses the conviction, the sentence, or both. If the court affirms the conviction and sentence, the defendant may petition the United States Supreme Court for *certiorari* review. *Certiorari* review is a discretionary device used by the Supreme Court to choose the cases it wishes to hear.

DIRECT APPEAL- UNITED STATES SUPREME COURT

The defendant, now called "the petitioner," files a petition for writ of *certiorari* in the United States Supreme Court in Washington, D. C., asking the Court to review the case and arguing that the defendant's federal constitutional rights were violated by the trial court or the Court of Criminal Appeals. The State continues to be represented by the District Attorney at this level. The State, called "the respondent," files a "brief in opposition" responding to the petition. The State argues various reasons for the Supreme Court to decline to review the defendant's case. In the vast majority of cases, the Supreme Court refuses to hear the case and denies, with a short written order, the defendant's petition for *certiorari*. At this point, the defendant's direct appeal is complete.

Texas Court of Criminal Appeals → **United States Supreme Court**

PART TWO
STATE *HABEAS CORPUS* PROCEEDINGS

A death-sentenced defendant is also entitled to seek state *habeas* review, an additional appeal differing from the direct appeal in that the defendant may raise claims based on facts outside the trial record (for example, ineffective assistance of trial counsel). State *habeas* review begins when the defendant, now called "the applicant," files an application for a writ of *habeas corpus* in the state district court in which he or she was convicted.

Counsel to assist the death-sentenced defendant in state *habeas* review is appointed immediately after the entry of judgment at trial, or at the earliest practical time, but in no event later than 30 days. (Pursuant to amendment affective 9/1/99.) A death-sentenced inmate's direct appeal and state *habeas* application are usually reviewed simultaneously by the Court of Criminal Appeals. In the defendant's application, the defendant, or "applicant," again presents claims in which it is argued, generally on alternative or additional bases to those raised on direct appeal, that the conviction and/or sentence are unlawful or were obtained in violation of the defendant's constitutional rights. The State, or "respondent," answers the application, specifically refuting the defendant's claims and arguing that no error occurred in either the guilt/innocence or punishment phases of the trial.

Sometimes, a hearing in the convicting court is necessary to resolve the defendant's claims. The trial court reviews the claims, makes findings of fact and conclusions of law regarding those claims, and recommends to the Texas Court of Criminal Appeals that it either grant or deny the defendant relief. While only the Court of Criminal Appeals can make the final decision upholding or overturning the defendant's conviction and/or sentence, that decision is normally based on the trial court's findings of fact and conclusions of law. As with the direct appeal, the defendant may seek review by the United States Supreme Court of the denial of relief by the Court of Criminal Appeals. However, such a review is very rare.

After the Court of Criminal Appeals denies relief, the trial court may set a defendant's execution date. This is rare, since the defendant is entitled to appeal to Federal Court. If this is the defendant's first execution date, the trial court may not set it before 91 days from the date of the order. If the defendant has previously had an execution date scheduled, the trial court may set a date no sooner than 31 days from the date of the order.

PART THREE
FEDERAL *HABEAS CORPUS* PROCEEDINGS

FEDERAL DISTRICT COURT

Federal *habeas* review follows state *habeas* review. The attorney who represented the defendant in state *habeas* proceedings has fifteen days after the denial of state *habeas* relief by the Court of Criminal Appeals to request that a United States District Court appoint counsel to represent an indigent defendant. The federal district court will appoint counsel and allow a certain number of days, varying with each court and the circumstances of the case, for the defendant to file a petition for a writ of *habeas corpus*. Here, the defendant is called "the petitioner," and the State, represented by the Office of the Attorney General, is called "the respondent."

In the petition filed in the United States District Court, the petitioner argues that the conviction and/or sentence should be overturned because the conviction was obtained in violation of the defendant's federal constitutional rights. In its answer, the State responds to each of the defendant's claims, arguing that relief must be denied and the conviction and sentence upheld. Normally, the State urges alternative bases for denying relief, including:

(1) various procedural bases, for example that a claim is foreclosed because the defendant did not object at trial or because the claim relies on a rule that is inapplicable in federal *habeas* review, and

(2) that the defendant's constitutional rights were not violated.

The record of all of the previous state court proceedings, including the trial, direct appeal, and state *habeas* action, are filed in the United States District Court. Sometimes, the court holds a hearing to resolve some or all of the defendant's claims. Then the court reviews the petition, the answer, the record from the state court proceedings, and the record of the federal hearing, if any, and decides whether to grant or deny the defendant relief on any of the claims. The court will address each claim in a written decision. If the court denies relief, the defendant may appeal the district court's decision to the United States Court of Appeals for the Fifth Circuit.

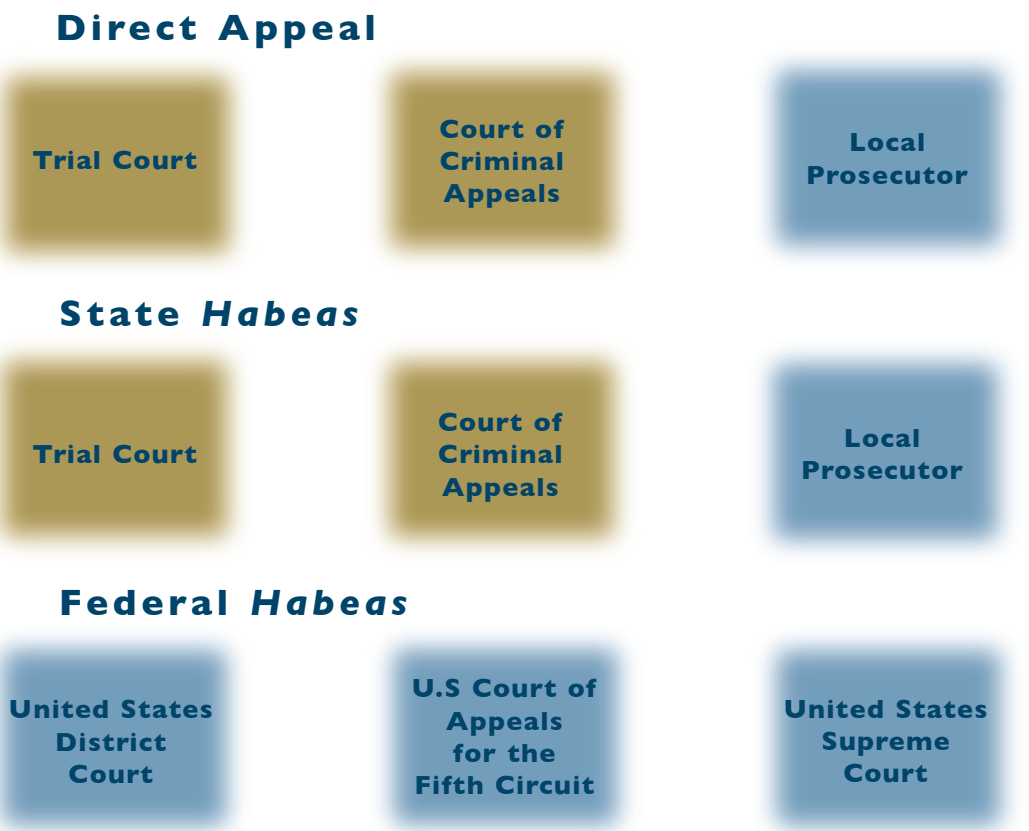
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The defendant, now called "the appellant," files a legal brief explaining why, in the defendant's view, the district court's denial of relief was wrong. The State, called "the appellee" and represented by the Office of the Attorney General, files a brief arguing that the district court correctly denied relief. In death penalty cases, the Fifth Circuit Court of Appeals often requires oral argument. Afterwards, the Fifth Circuit considers the briefs, the arguments, and the record from the district court and issues a written opinion either affirming or reversing the district court's decision. If the Fifth Circuit affirms the district court's decision, the defendant may petition the Supreme Court to review the case.

THE UNITED STATES SUPREME COURT

The defendant, called "the petitioner," files a petition for writ of *certiorari* in the United States Supreme Court in Washington, D.C., asking the Court to review the case and arguing that the decision of the Fifth Circuit Court of Appeals is incorrect. The State, now "the respondent," files a brief in opposition, arguing that the Fifth Circuit's decision is correct and stating that there is no reason for the Supreme Court to review the defendant's case. Generally, the Supreme Court denies the defendant's petition for writ of *certiorari* with a short written order.

Appellate Procedure *for* Capital Litigation



PART FOUR
EXECUTIVE CLEMENCY

Executive Clemency is the power of the governor to grant full or conditional pardons, reprieves of execution, and commutations of sentences, and to remit fines and forfeitures resulting from criminal convictions. These can be granted by the governor only upon the recommendation of the Board of Pardons and Paroles.

PART FIVE
EXECUTION

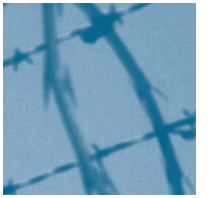
Often more than one execution date is set in a case. Once a stage in the appellate procedure is complete, an execution date may be set to induce an inmate to file the next appeal in a timely manner. The execution date then may be stayed by the court with jurisdiction over the next appeal. Once the appeals are exhausted and the inmate has exercised all rights to appeal with no relief and any requested clemency is denied, the execution takes place.

A victim's surviving family member has the right to request to view the execution. Approval and arrangements must be made through the Texas Department of Criminal Justice, Victim Services Division, at 1-800-848-4284 or (512) 406-5424. A representative from TDCJ is available to accompany family members to the execution should they choose to attend. For further information, please call the TDJC Victim Services Division at 1-800-848-4284 or (512) 406-5424 or the Attorney General's Victim Assistance Coordinator at 1-800-983-9933, ext. 3-6294, or (512) 463-6294.

PART SIX
POST-EXECUTION

Once an execution is over, families and friends have complex reactions. Despite feelings of relief, one can also still feel very empty and depressed. While some may feel that justice has been served, others might still feel upset. The execution may in some cases trigger new emotions.

There is no right or wrong way to feel. Whatever the reaction to the execution, it is a personal reaction. The Victim Services Division of the Texas Department of Corrections is available throughout the process. The Office of the Attorney General can also provide referrals to a support group or grief counselor in your area.



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