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Interview with Former Chief Justice Wallace B. Jefferson

**Hon. Wallace B. Jefferson
Pamela Stanton Baron**

Paper: Ten Things Your Client Needs to Know About Taking a Case to the Texas Supreme Court

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By Pamela Stanton Baron

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Ten Things Your Client Needs to Know About Taking a Case to the Texas Supreme Court

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Most clients contemplating an appeal to the Texas Supreme Court want to know the answer to three questions: what are my chances of success, how long will it take, and how much will it cost? The simple answer is 9%, 2 years, and \$50,000 or more. Of course, the real answer is more complicated. And, the client needs to know far more than the answer to these three questions.

This paper identifies ten things clients need to know about taking a case to the Texas Supreme Court. A client who is educated about the process can make better strategic decisions and will have realistic expectations about the end result.

1. The odds are against you: understand the stages of review and the odds at each stage.

A case at the Texas Supreme Court proceeds in four stages: (1) the petition-filing stage; (2) the response stage; (3) briefs on the merits; and (4) grant and opinion.

The author has undertaken several studies over the years to determine odds of a grant at the first three stages. The studies generally show that responses are filed, either voluntarily or at the request of the Court, in about 50% of the cases; briefs on the merits are requested in about 25% of the cases; and the petition is granted in about 10% of the cases. At each stage, the odds of a grant increase.

The chart below summarizes three studies:

Stages of a case*

	2009 %	2010 %	2012 %
Voluntary response	10.5	8.3	14.0
Response requested	39.0	33.3	41.3
Total responses	49.5	41.6	55.3
Full briefing	20.5	20.0	29.3
Grant or PC	11.0	7.7	10.0
Deny or dismiss	89.0	92.3	90.0
Still pending	0.0	0.0	0.0
Total	100%	100%	100%

* Studies look at 200-300 consecutive cases in which petitions for review, mandamus, or habeas were actually filed and exclude disciplinary appeals.

Based on these studies, it is possible to calculate the odds of a grant at each stage of a case, as shown in the chart on the following page:

Odds of a Grant by Stage

	2009 study	2010 study	2012 study	Average
Petition stage	11%	7.7%	10.0%	9.6%
Petition after response	22%	18.5%	18.1%	19.5%
Petition after briefs	54%	38.5%	34.1%	42.2%

And, then, of course, the odds of a grant generally increase the longer the case is pending:

Shadow Docket (Petitions Pending More Than a Year Without Action) Grant Rates

Shadow dkt. July 31	Cases Pend.	PC	Grant	Grant Rate %
2009	43	17	11	65
2010	45	16	4	44
2011	43	13	2	35
2012	44	11	11	50
3-Term Average:				49%

Success rate, of course, is different from the grant rate. The following chart shows the percentage of granted cases in which the Court reversed the lower court's judgment in whole or in part. The average for the past five years is about an 89% reversal rate in granted cases.

Reversal Rates

Term ended Aug. 31	Deciding opinions	Rev'd (%)
2009	114	93
2010	93	92
2011	112	86
2012	94	89
2013	84	86
Average		89%

So, to calculate the overall odds of success at the various stages, the odds of a grant would be multiplied by the reversal rate:

Success Rates

	Odds of grant	Reversal rate	Odds of success
Petition stage	9.6%	89%	8.5%
Petition after response	19.5%	89%	17.4%
Petition after briefs	42.2%	89%	37.6%
Shadow docket	49%	89%	43.6%

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