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A Prayer and A Hope:
Effective Prayers to Get the Relief You Really Want

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“Under certain circumstances, profanity provides a relief denied even to prayer.” – Mark Twain

I. Introduction

The prayer for relief is often seen as an afterthought to the appellate brief-writing process. Perhaps because the main sections of the brief have already presented the issues and the legal analysis, many appellate practitioners treat the prayer as a formal recitation—one that could easily be omitted if the rules did not require it to be included.

That approach to the prayer, however, unnecessarily limits the persuasive and informative power of the brief. Not only is a well-drafted prayer an important tool in a party’s arsenal to convince the appellate court of his case, it also provides information indispensable to the judges and court staff who are tasked with crafting an opinion and judgment. An effective prayer can tip the scales in a party’s favor. An ineffective or ill-advised prayer, on the other hand, can hamper or even ruin a party’s chances for success.

This paper aims to offer guidance on writing effective prayers in Texas appellate courts. Part II begins by outlining the prayer requirements under the Texas Rules of Appellate Procedure, which unfortunately provide little guidance on the contents of an effective prayer. Parts III and IV then discuss the importance of the prayer—both from the court’s perspective and from the client’s—and the prayer’s potential impact on the relief a party can hope to receive. Part V enumerates specific prayers most commonly found in appellate briefs, providing a reference for the practitioner who is drafting a brief and wants a checklist to guide his construction of the prayer. Finally, Part VI offers suggestions for correcting deficient prayers, including requests for leave to amend the prayer.

II. Overview of the Prayer Requirement

Texas Rule of Appellate Procedure 38.1(j) requires that an appellant’s brief contain a “prayer”—a “short conclusion that clearly states the nature of the relief sought.” TEX. R. APP. P. 38.1(j). The rules similarly require a prayer in most other briefs. *See, e.g., id.* 38.2(a)(1) (appellee’s brief), 53.2(j) (petition for review), 53.3 (response to petition for review), 55.2(j) (petitioner’s brief on the merits), 55.3 (respondent’s brief on the merits). Likewise, any motion filed with an appellate court must “set forth the order or relief sought.” *Id.* 10.1(a)(3). The rules do not explicitly require reply briefs to include a prayer, but typically a reply brief should include a prayer that reiterates the relief requested in the party’s opening brief.

Other than the language above—“short conclusion that clearly states the nature of the relief sought”—the appellate rules provide little guidance on what the prayer should contain. Rule 43.2 comes closest to discussing the issue, as it establishes the six types of judgment an appellate court may enter on the merits. *See id.* 43.2 (allowing the court to: (a) affirm the judgment, (b) modify the

judgment, (c) reverse and render, (d) reverse and remand, (e) vacate the judgment, or (f) dismiss the appeal). Because the prayer must state the “nature of the relief sought,” *id.* 38.1(j), a prayer should generally specify which of these six judgments the party is seeking. If the filing is one that does not seek a judgment—*e.g.*, a motion for extension of time to file a brief—the prayer should simply make clear the relief sought. *See id.* 10.1(a)(3).

Beyond the implicit guidance offered by Rule 43.2, appellate practitioners will not find much in the rules about how to draft an effective prayer. This paper will attempt to provide that guidance in the sections below, drawing from the Texas cases that have discussed the significance of prayers to the appellate process.

III. The Importance of the Prayer

An appellate court will often look to the prayer to ensure that the prevailing party receives the relief it requested. If the issues presented are complex or unclear, the court may even look to the prayer to determine what the case is really about. Thus, from the court’s perspective, it is imperative that the prayer clearly state the relief sought.

Along with the summary of the argument, the prayer provides the most succinct and easily accessible overview of a party’s case. From reading those two sections, a judge should be able to easily discern both the party’s substantive argument and the procedural disposition the party seeks. Indeed, a judge who wishes to quickly refresh his memory about a case may turn immediately to those two sections of the brief (along with the table of contents). Particularly in courts with busier dockets—where months at a time may pass without activity on a case while the court works on other matters—it is crucial that the brief provide this necessary refresher through a clear and concise prayer.

Although practices vary, many courts and judges will use the prevailing party’s prayer as a template for drafting the judgment. For that reason, the prayer should use the precise terminology that the prevailing party would want reflected in the judgment itself. Even if the brief’s substantive argument leaves little doubt about the relief requested, the prayer should reiterate that request with specific reference to one (or more) of the possible judgments enumerated in Rule 43.2. If the party seeks some specific or unique form of relief not enumerated in Rule 43.2, the prayer should also include that request. *See infra* V (discussing particular prayers).

The prayer is especially important when the case turns on an issue that gives the court more than one option for the type of judgment to enter. For example, suppose a defendant appeals an interlocutory order granting class certification. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(3). On appeal, the defendant argues that the district court abused its discretion in finding that the proposed class met every requirement for certification under Texas Rule of Civil Procedure 42. If the court agrees with the defendant, it will have discretion either to reverse and remand the case (presumably with instructions to guide a new certification analysis by the district court), or simply to render judgment for the defendant. *See Phila. Am. Life Ins. Co. v. Turner*, 131 S.W.3d 576, 585 (Tex. App.—Fort Worth 2004, no pet.); *Kondos v. Lincoln Prop. Co.*, 110 S.W.3d 716, 723–24 (Tex. App.—Dallas 2003, no pet.). Depending on how the defendant framed his substantive arguments, it may not be clear which disposition he expects. The defendant can use the prayer to

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