

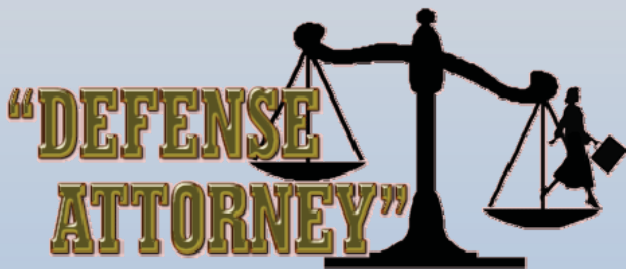
# Appellate Tips from the “Experts”

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**THE PROSECUTION**



## First Steps

- Talk with Trial Counsel
- Check Clerk's Event Log
- Motion for New Trial—**Tex. R. App. P. 21**
  - **Rule 21.2 When Motion for New Trial Required.**—A motion for new trial is a prerequisite to presenting a point of error on appeal only when necessary to adduce facts not in the record.
  - **Presentment**
  - **Tex. Crim. Proc. Code art. 40.001**—A new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial.



## Initial Considerations

- Tex. Crim. Proc. Code art. 44.01
  - **(a)** The state is entitled to appeal an order of a court in a criminal case if the order:
    - **(1)** dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;
    - **(2)** arrests or modifies a judgment;
    - **(3)** grants a new trial;
    - **(4)** sustains a claim of former jeopardy;
    - **(5)** grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case; or
    - **(6)** is issued under Chapter 64.

# The Appellate Record



## The Appellate Record

- **Tex. R. App. P. 34**

- **34.1 *Contents.***—The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. Even if more than one notice of appeal is filed, there should be only one appellate record in a case.
- **34.2 *Agreed Record.***—By written stipulation filed with the trial court clerk, the parties may agree on the contents of the appellate record. An agreed record will be presumed to contain all evidence and filings relevant to the appeal. To request matter to be included in the agreed record, the parties must comply with the procedures in Rules 34.5 and 34.6.
- **34.3 *Agreed Statement of the Case.***—In lieu of a reporter's record, the parties may agree on a brief statement of the case. The statement must be filed with the trial court clerk and included in the appellate record.

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