



# Our Top 15 Writ Tips and Hacks

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## Disclaimers ... and Admonitions

Our personal observations after combined years of practice in various settings ..... Nothing “official” .... Not representing anyone here but ourselves – no Court, no prosecutor’s office, no law school, no non-profit voluntary lawyers associations

- Writs are incredibly specific
- Some rules are picky, and strictly construed
- At local district court level, writ practice varies across Texas
- Paper = basic primer
- When in doubt, reach out and ASK

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## TIP 1: Understanding that the landscape for this case may be unique

**Basic rule for felonies: Final conviction, one vehicle, one form, one year, one chance**

- Two of these are malleable, the others not at all
- Intersection with AEDPA and the federal system

**Picking right vehicle: 11.07 = sole writ to challenge final non-death felony conviction**

[capital, pretrial, probation, misdemeanors all have their own statutes]

## Where does probation fit into the equation?

### **11.07**

- Probation / Deferred REVOKED and Defendant **Confined**

### **11.072**

- Defendant seeks to challenge constitutionality of probation condition
- Defendant successfully completed probation / deferred
- Defendant was revoked but not confined

## Tip 2: Thinking broadly about “restraint”

- Confinement means
  - Confinement OR
  - Any collateral consequence resulting from conviction being challenged
- Locating collateral consequences
  - Texas: State Law Library, “*Statutory Restrictions on Convicted Felons in Texas*”
  - National Inventory of Collateral Consequences of Conviction [ABA Criminal Justice Section collaboration]
- It should be tied to this particular case and explicitly pled

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## TIP 3: Memorializing Defense Counsel’s scope of work

### What You’ll Do

- “Opinion letter” detailing possible grounds following investigation
- Writ application with supporting memorandum of law
- State Writ or Federal Writ or both
- Federal writ appeal
- Petition for certiorari

### What You’ll Charge

- Stair step options
- Litigation costs – part of your fee or separate expenses
  - Investigator
  - Transcript
  - Expert witness evaluation
  - Expert witness affidavit or testimony
  - Travel

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First appeared as part of the conference materials for the  
2020 Robert O. Dawson Conference on Criminal Appeals session  
"Practical Tips from Writ Litigators"