

## Costs

### Appellate Costs

There is difficult to estimate the cost of an appeal billed at an hourly rate. But over the years we've found we can come close to an average. Because of this, and because we have seen many worthy appeals not proceed due to the uncertainty of cost and the financial exhaustion of parties, we've decided to offer appellate work on the flat fee structure outlined below.

### Flat Fee Structure

To pursue or defend an appeal of up to 3 distinct issues:	<b>\$11,500</b>
For each additional distinct issue:	<b>\$2,500</b>
Petition or response to the Texas Supreme Court:	<b>\$6,500</b>
To pursue or contest a petition for writ of mandamus:	<b>\$8,500</b>

Note: While we investigate the advisability of appeal, we will require a retainer, typically between \$1,500 and \$3,500 depending on the size of the record. Any amount spent will be taken off the flat fee in the event an appeal is pursued.

### Post-Trial

We're happy to assist at the trial court level with post-trial matters such as findings of fact and conclusions of law, motions for new trial, motions to stay execution, and more. For these matters, we work on retainer and bill at our hourly rates. Because these rates change, feel free to call us at the number below to inquire about current rates.

# FMLT

FRIDAY MILNER  
LAMBERT TURNER

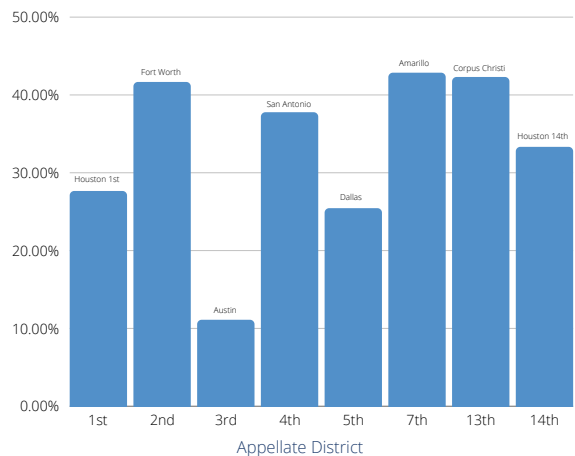
### FLAT FEE FAMILY LAW APPEALS

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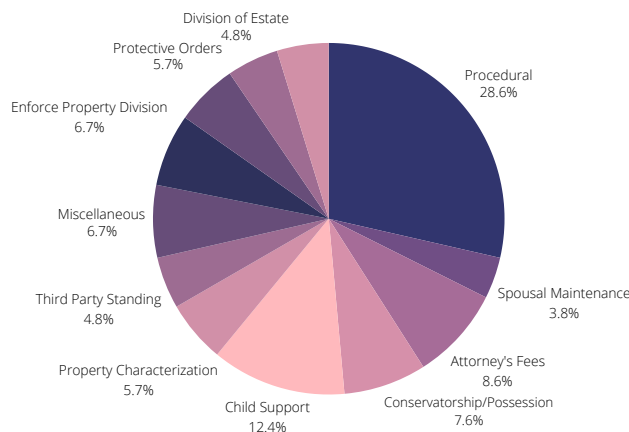
## Appellate Statistics

For the top 8 highest volume courts, 2019 - 2021

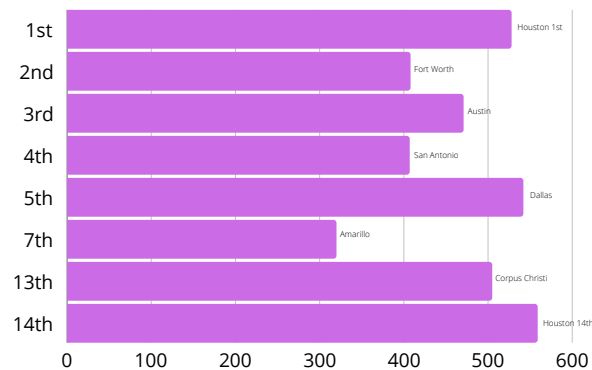
### % of Full or Partial Reversals - All Family Law Appeals



### Distribution of Reversals - All Family Law Appeals



### Avg. Days to Decision by Court - Family Law Cases



## Family Law Appeals

A Trial Lawyer's Desk Reference

### Appellate Deadlines

Deadlines for standard appeals

### Issue Types & Standards

Appellate standards by case type

### Mandamus

Deadlines, standards & eligible cases

### Mistakes to Avoid

How to avoid waiving error

### Appellate Statistics

Just because you might be interested!

### Costs

Costs for appeals & mandamus

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### FLAT FEE FAMILY LAW APPEALS

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# Appellate Deadlines

## Deadlines for Standard Appeals

- To request **Findings of Fact and C.O.L.:** **20 days after Final Order\***
  - To file **Notice of Appeal:** **30 days after Final Order**
    - Unless** request made for MNT or FOFCOL, then: **90 days after Final Order**
  - To file **Motion for New Trial** ("MNT"): **30 days after Final Order**
  - For **court to issue FOFCOL:** **20 days after request**
  - To have **MNT heard:** **75 days after Final Order**
  - To file **Appellant's Brief:** **30 days after records filed\*\***
  - To file **Appellee's Brief:** **30 days after Appellant's Brief**
  - To file **Reply Brief** (optional): **20 days after Appellee's Brief**
  - To file **Motion to Stay** Execution: **Before execution of judgment**
- 
- Deadline for court clerk and reporter to file records with Court of Appeals: **60 days after Final Order** if no MNT or FOFCOL; or **120 days after Final Order** if MNT or FOFCOL

\*\*"Final Order" means the date the final order is signed.

\*\*\*"Records filed" means the clerk and reporter have filed their records in the appellate court.

## Temporary Orders Pending Appeal

During an appeal, temporary orders are available on issues of support, attorneys fees, conservatorship and more.

- Deadline to **file motion** for temporary orders: **Appellant: 30 days (if no MNT, FOFCOL), otherwise 90 days.**  
**Appellee: 14 days after notice of appeal.**
- Deadline for trial court to **hear & sign** order: **60 days after Notice of Appeal**

## Mandamus & Motions to Stay While Pending

There are no set deadlines for a petition for mandamus or a motion to stay, however, time is of the essence as soon as a trial court issues its ruling. Here are some best practices:

- Written Order:** In order to take action, the appellate court typically must have a written order unless the court's order is clear from the clerk's record (e.g. a letter ruling). Have an order signed as soon as possible.
- Request Record:** An appellate court typically must have a record unless the error is clear on the face of the clerk's record. Request the reporter's record right away.
- Timing of Petition:** Unless error is clear on the face of the clerk's record, filing should occur shortly after the reporters' record is filed. Filing prior to the record being filed may risk dismissal for lack of a record. A relator can also waive their remedy if they wait too long to file.

# Appellate Standards & Issue Types

## Appellate Standards

The **Standard of Review** determines what deference the trial court's judgment will be shown by the appellate court.

- Abuse of Discretion** (Most deference): Whether a trial court's decision is arbitrary and unreasonable, and without reference to any guiding rules and principles.
- Sufficiency of Evidence:** (Less deference): Whether the evidence at trial was sufficient to support the ruling, taking into account all evidence supporting the ruling, & disregarding all contrary evidence a reasonable trier of fact could have disregarded.
- De Novo** (No deference): Whether the trial court correctly interpreted and applied the law. Some specific matters are also reviewed de novo even if the ruling involves a factual finding.
  - Overlapping Standards:** Appellate standards can overlap. Family law substantive issues are reviewed on an abuse of discretion standard, with abuse of discretion being based largely on sufficiency of the evidence.

## Abuse of Discretion

Applied to most rulings on procedural or interim matters such as discovery issues, evidentiary rulings, granting or denying motions for continuance, awards or denials of attorneys fees, denials of jury demands, discretionary transfers, etc.

- Temporary Orders:** Temporary orders are overturned by writs of mandamus, requiring a showing of clear abuse of discretion.

## Abuse of Discretion based on Sufficiency of Evidence

With very few exceptions, any of a trial court's findings based on **evidence**, including:

- Best interest determinations concerning child-related issues such as conservatorship, possession, child support, etc.
- Decisions related to property division: "just and right" division, sufficiency of separate property tracing, reimbursement, etc.
- Findings related to the necessity, amount & duration of spousal maintenance

## De Novo

Final orders resulting from interpretation of **law** and application of the law to the facts.

**Some specific matters** even if they do not arise from an interpretation of law: Legal standing of parties, Summary Judgment, and unambiguous language in contracts such as MSAs, premarital agreements, etc.

# Mandamus

## Standard for Mandamus

Mandamus is intended to be an extraordinary remedy reserved for situations involving **urgent necessity**. A relator must show:

- A **clear abuse of discretion** by the trial court; and
- The relator has **no adequate appellate remedy**.

## Types of Cases

The following are **examples** of cases where mandamus might be appropriate:

Cases where the **forementioned standards** can be met **and** the court:

- Has changed a child's **primary residence** on temporary orders.
- Has held someone in **contempt**.
- Has compelled production of **privileged or protected information**.
- Has **refused to compel** discovery necessary to a parties' case.
- Has wrongfully refused or assumed jurisdiction under the **UCCJEA**.
- Has denied a **mandatory transfer of venue**.
- Other matters involving **urgent necessity**. Ask an appellate lawyer!

## Motions to Stay

A major benefit of filing for a writ of mandamus is the willingness of appellate courts to issue **stays** while petition is pending. This can be very helpful if the court's order would prejudice a case, such as a temporary change of a child's primary residence.

## Trial (and post-trial) Mistakes to Avoid

- Prove all of elements of your case:** Lawyers often fall short of this in default situations, when the evidence is heavily in their favor, or when a judge wishes to shortcut evidence.
- Preserve error.** Generally speaking, complaints on appeal must resemble complaints at trial, and may be waived if they do not.
  - Legal issues:** Ensure all legal claims and defenses are sufficiently pled, clearly articulated on record, and ruled upon on record.
  - Evidentiary objections:** Timely lodge objections, state the objection specifically, obtain a ruling, and make an offer of proof for improperly excluded evidence.
- Ensure there is a record:** If a record does not exist, the appellate court will assume sufficient evidence was provided.
- Acceptance of Benefits:** Clients' acceptance of the benefits of property divisions may bar appeal. Generally, a client should be careful in disposing of assets unless absolutely necessary.
- Violations of Orders:** Appeals can be dismissed if a party has willfully violated an order. Request a stay if an order cannot be followed.