

LETHALLY DEFICIENT: DIRECT APPEALS IN TEXAS DEATH PENALTY CASES – SECTION V(C)
MINIMAL CLIENT COMMUNICATION

²⁷² TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03 (“(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

²⁷³ TEXAS GUIDELINE 10.2(c).

²⁷⁴ NEW YORK OFFICE OF INDIGENT LEGAL SERVICES, APPELLATE STANDARDS AND BEST PRACTICES IX & cmt (effective Jan. 5, 2015), <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>.

²⁷⁵ ABA GUIDELINE 10.15.1(E)(2) & cmt “Counsel’s ongoing monitoring of the client’s status, required by Subsection E(2), also has a strictly legal purpose. . . . [Deterioration of] the client’s mental condition may directly affect the legal posture of the case and the lawyer needs to be aware of developments. For example, the case establishing the proposition that insane persons cannot be executed was heavily based on notes on the client’s mental status that counsel had kept over a period of months.” (internal citations omitted).

²⁷⁶ ABA GUIDELINE 10.5 & cmt (“The Temporal Scope of Counsel’s Duties”).

²⁷⁷ These 50 cases include 49 cases where the defendant was represented by counsel on direct appeal and TDS obtained copy of the defense counsel’s itemized billing statement, and [Travis Mullis](#)’ case where billing records indicate that he waived his right to counsel after his attorney conducted in-person meetings with him. The 49 “full” records are for the following cases: [Douglas Armstrong](#), [Teddric Batiste](#), [Donald Bess](#), [Brent Brewer](#), [James Broadnax](#), [Micah Brown](#), [Tyrone Cade](#), [Kimberly Cargill](#), [Jaime Cole](#), [Raul Cortez](#), [Obel Cruz-Garcia](#), [Rickey Cummings](#), [Erick Davila](#), [Irving Davis](#), [Areli Escobar](#), [Robert Fratta](#), [James Freeman](#), [Milton Gobert](#), [Gary Green](#), [Howard Guidry](#), [Garland Harper](#), [Roderick Harris](#), [John Hummel](#), [Christopher Jackson](#), [Joseph Jean](#), [Dexter Johnson](#), [Matthew Johnson](#), [Mabry Landor](#), [Juan Lizcano](#), [Daniel Lopez](#), [Jerry Martin](#), [Raymond Martinez](#), [Randall Mays](#), [Hector Medina](#), [Naim Muhammad](#), [Steven Nelson](#), [Mark Robertson](#), [Cortne Robinson](#), [Kwame Rockwell](#), [Rosendo Rodriguez](#), [Wesley Ruiz](#), [Demetrius Smith](#), [Mark Soliz](#), [Robert Sparks](#), [Paul Storey](#), [Richard Tabler](#), [John Thuesen](#), [Albert Turner](#), and [Antonio Williams](#).

²⁷⁸ [Douglas Armstrong](#), [Brent Brewer](#), [Tyrone Cade](#), [Jaime Cole](#), [Obel Cruz-Garcia](#), , [Rickey Cummings](#), [Erick Davila](#), [Irving Davis](#), [John Hummel](#), [Joseph Jean](#), [Mabry Landor](#), [Randall Mays](#), [Travis Mullis](#), [Kwame Rockwell](#), [Rosendo Rodriguez](#), [Demetrius Smith](#), [Mark Soliz](#), and [Albert Turner](#). TDS sought to verify this dearth of attorney-client visits through public information requests to the Texas Department of Criminal Justice that sought copies of attorney visitation applications for each inmate within our survey. TDCJ initially responded to our requests by stating that it had no record of an attorney visit to any of the three women detained at the Mountain View Unit. (This response did not include Kim Cargill because the CCA had not ruled on her direct appeal at the time of the request.) TDCJ subsequently withheld visitation records concerning the male death row inmates in our survey under a claim of constitutional privilege.

²⁷⁹ [James Broadnax](#), [Micah Brown](#), [Kimberly Cargill](#), [Garland Harper](#), [Roderick Harris](#), [Matthew Johnson](#), [Juan Lizcano](#), [Daniel Lopez](#), [Hector Medina](#), [Mark Robertson](#), [Cortne Robinson](#) and [Robert Sparks](#).

²⁸⁰ [Teddric Batiste](#), [Donald Bess](#), [James Freeman](#), [Milton Gobert](#), [Gary Green](#), [Jerry Martin](#), [Raymond Martinez](#), and [Naim Muhammad](#). It is possible that counsel corresponded with their clients in these cases but did not request payment for these services. However, correspondence with a client is an important part of representation. Attorneys should be compensated for the time expended advising clients of case developments and answering their questions.

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²⁸¹ [Letter from Kosul Chanthakoumanne to Court of Criminal Appeals \(July 23, 2009\)](#) (copy on file with author) [hereinafter Chantakoumanne Complaint]; [Emergency Motion for Appointment of Different Counsel to File Supplemental Brief to Direct Appeal, Fratta v. State, No. AP-76,188 \(Tex. Crim. App. June 22, 2010\)](#) [hereinafter Fratta Motion]; [Letter from John Steven Gardner to Hon. Curt Henderson, 219th Dist. Ct. \(Mar. 12, 2008\)](#) (copy on file with author) (requesting the appointment of new counsel); [Letter from Dwayne Gobert to Clerk of the CCA \(dated Jan. 6, 2012\)](#) (requesting the appointment of counsel to file a petition for writ of *certiorari* due to his lawyer's illness); [Letter from Mabry J. Landor, III to Court of Criminal Appeals \(Apr. 10, 2013\)](#) (complaining that his direct appeal lawyer didn't raise certain issues in his brief) [hereinafter Landor Complaint]; [Letter from Dexter Johnson to Court of Criminal Appeals \(Sept. 23, 2007\)](#) (stating that he had not heard from his lawyer) [hereinafter D. Johnson Complaint]; [Letter from Christopher Wilkins to Louise Pearson, Clerk of Court, Court of Criminal Appeals \(Dec. 12, 2008\)](#) [hereinafter Wilkins Complaint].

²⁸² [Letter from Dexter Johnson to Louise Pearson, Clerk of Court, Court of Criminal Appeals \(Aug. 15, 2007\)](#).

²⁸³ [D. Johnson Complaint](#), *supra* note 280.

²⁸⁴ [Letter from Dexter Johnson to the Court of Criminal Appeals \(Nov. 19, 2008\)](#).

²⁸⁵ [Wilkins Complaint](#), *supra* note 280.

²⁸⁶ Johnson (Dexter) v. State, No. AP-75,749, 2010 WL 359018, at *1 (Tex. Crim. App. Jan. 27, 2010) (“[P]oints of error one and two are moot. After reviewing appellant's three remaining points of error, we find them to be without merit and affirm the trial court's judgment and sentence of death.”); Wilkins v. State, No. AP-75,878, 2010 WL 4117677, at *1 (Tex. Crim. App. Oct. 20, 2010) (“[W]e affirm the judgment and sentence of the trial court.”).

²⁸⁷ McCoy v. Court of Appeals, 486 U.S. 429, 438 (1988); *see also* Douglas v. California, 372 U.S. 353, 357 (1963).

²⁸⁸ *See e.g., Ex parte Miller*, 330 S.W.3d 610 (Tex. Crim. App. 2012) (holding that the defendant's appellate counsel was ineffective for failing to assert a “lead pipe” legal claim concerning the sufficiency of the evidence).

²⁸⁹ [Chanthakoumanne Complaint](#), *supra* note 280; [Landor Complaint](#), *supra* note 280; [Fratta Motion](#), *supra* note 280.

²⁹⁰ At the time this report was drafted the CCA reversed Stanley Griffin's capital murder conviction because the evidence admitted during his trial was insufficient to prove that he committed capital murder. Griffin v. State, No. AP-76,834, 2016 WL 335025 at *6 (Tex. Crim. App. Jan. 27, 2016).

²⁹⁰ Fratta v. State, No. AP-76,188, 2011 WL 4582498 (Tex. Crim. App. Oct. 5, 2011); Landor v. State, No. AP-76,328, slip op. at 1 (Tex. Crim. App. June 29, 2011); Chanthakoumanne v. State, No. AP-75,794, 2010 WL 1696789 (Tex. Crim. App. Apr. 28, 2010).

²⁹² [Letter from John Ramirez to Hon. Bobby Galvan, 94th Dist. Ct. \(Mar. 11, 2011\)](#) (copy on file with author) (“I'm writing to inform the court that I've decided to drop/waive all my appeals!”).

²⁹³ [Letter from Richard L. Tabler to Hon. Mary Trudo, 264th Dist. Ct. \(May 24, 2010\)](#) (copy on file with author) (stating that he waived his appeals and requesting that the district court reinstate his execution date).

²⁹⁴ [Motion for Assertion of Pro Se Right, State v. Lopez, No. 090-CR-0787B \(17th Dist. Ct., Nueces County, Tex. Apr. 5, 2010\)](#).

²⁹⁵ [Letter from Selwyn Davis to the Court of Criminal Appeals \(Aug. 30, 2011\)](#) (copy on file with author) (stating that he would like to drop his appeals).

²⁹⁶ [Waiver of Rights and Invocation of Defendant's Right to Proceed Pro Se, State v. Mullis, No. 08-CR-0333 \(122nd Dist. Ct., Galveston County, Tex. May 16, 2011\)](#).

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²⁹⁷ Court records obtained by TDS found that the CCA responded to Travis Mullis and Selwyn Davis' requests to waive their direct appeals by abating the appeals and directing the trial courts to conduct a hearing on each defendant's psychological condition and the voluntariness of his waiver. In Daniel Lopez' case, the trial court conducted a hearing on the voluntariness of his waiver of a state post-conviction lawyer, but does not appear to have conducted a similar hearing regarding his representation on direct appeal. Lopez's lawyer billed one hour for this hearing without additional time to meet with his client. [Letter from Laura Garza Jimenez, Nueces County Attorney to Julie Pennington, Texas Defender Service \(dated Aug. 14, 2014\)](#) (enclosing information regarding Nueces County's payments for defense services in Lopez v. State, No. AP-76, 327) [hereinafter Lopez Attorney Bill].

²⁹⁸ See Mullis v. State, No. AP-76,525, 2012 WL 1438685, at *1 (Tex. Crim. App. Apr. 25, 2012) (upholding the defendant's conviction and sentence on direct appeal and stating that at a hearing "expressed his desire to dismiss his court-appointed appellate counsel, raise no points of error," and entered a valid waiver of his right to counsel).

²⁹⁹ [Voluntary Dismissal of Appeal, State v. Mullis, No. 08-CR-0333 \(122nd Dist. Ct., Nueces County, Tex. undated\)](#).

³⁰⁰ [Letter from Hon. Martha Trudo, 264th District Court, to Louise Pearson, Court of Criminal Appeals \(June 24, 2009\)](#) (attaching Richard Tabler's letter seeking to reinstate his appeals); [Letter from Selwyn Davis to the Court of Criminal Appeals \(Apr. 19, 2010\)](#) (copy on file with author).

³⁰¹ [Letter from Abel Acosta, Court of Criminal Appeals, to Hon. Sandra Watts, 17th Dist. Ct. \(Aug. 8, 2011\)](#) (attaching a second letter from the defendant waiving his appeals but noting that defense counsel filed a brief on the defendant's behalf).

³⁰² [Appellant's Brief, Ramirez v. State, No. AP-76,100 \(Tex. Crim. App. Apr. 8, 2010\)](#).

³⁰³ See ABA GUIDELINE 10.5 cmt. at 1010 (stating that it is ineffectiveness for a lawyer to "simply acquiesce to [volunteering client's] wishes, which usually reflect distorting effectives of overwhelming feelings of guilt and despair rather than a rational decision in favor of state-assisted suicide").

³⁰⁴ *Id.*

³⁰⁵ ROBERT JOHNSON, CONDEMNED TO DIE: LIFE UNDER A SENTENCE OF DEATH 105 (1989).

³⁰⁶ See e.g., Melvin I. Urofsky, *A Right to Die: Termination of Appeal for Condemned Prisoners*, 75 J. CRIM. L & CRIMINOLOGY 553, 558 (Fall 1984) (describing the case of Frank J. Coppola, "[a] former policeman and seminarian, Coppola insisted he was innocent, but after the state's highest court found no error in his trial and the Supreme Court denied *certiorari*, he decided to drop his appeal. He was ready to die, he said, 'to preserve his dignity and spare his family further agony[.]'" (internal citations omitted).

³⁰⁷ [Attorney Fee Voucher, State v. Lopez, No. 09-CR-0787-B \(117th Dist. Ct., Nueces County, Tex. Jun. 2, 2011\)](#). An attachment to the lawyer's payment voucher in Mr. Lopez's case itemizes 72.5 hours of work from "opening the file" on March 3, 2010 through mailing a copy of the filed brief to the defendant on June 2, 2011. This billing period overlaps with Mr. Lopez's first application to proceed *pro se* on April 5, 2010. [Letter from Daniel Lopez to Judge Watts \(April 5, 2010\)](#) (copy on file with author) (attaching a handwritten motion to proceed *pro se*). After an appellate brief was filed in his case, Mr. Lopez again wrote to the CCA to state that he had waived his appeals. [Letter from Abel Acosta, Chief Deputy Clerk, Court of Criminal Appeals to Hon. Sandra Watts, 17th Dist. Ct. \(Aug. 8, 2011\)](#) (copy on file with author) (attaching a letter from the defendant dated Aug. 1, 2011). The billing records collected by TDS do not state what (if any) action defense counsel took following this request.

³⁰⁸ [Request for Payment, State v. Tabler, No. 57382 \(264th Dist. Ct., Bell County, Tex. Nov. 5, 2010\)](#) [hereinafter Tabler Attorney Bill].

³⁰⁹ Itemized billing records are unavailable for the Selwyn Davis and John Henry Ramirez cases. See [Requests for payment for Services Rendered as Court Appointed Counsel, State v. Davis, No. 06-904119 \(390th Dist. Ct., Travis County, Tex. Sept. 2, 2009 & Oct. 22, 2009\)](#) (copy on file with author) (stating lump sums without itemized

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attachments); and [Letter from Laura Garza Jimenez, Nueces County Attorney to Ashley Steele, Texas Defender Service \(Nov. 20, 2014\)](#) (copy on file with author) (stating that Nueces County does not have any itemized timesheets or billing statements relating to Ramirez v. State, which were destroyed pursuant to the County’s document retention schedule). In his letter seeking to “waive” his appeals, Ramirez stated that he wrote to his counsel and asked that the lawyer file motions to give effect to this request but that “[h]e’s never answer [his] letters in the past so [Ramirez didn’t] expect a reply this time either.” [Letter from John Henry Ramirez to District Judge Bobby Galvan \(Mar. 11, 2011\)](#). By contrast, the billing statement for Travis Mullis’ case shows that his assigned counsel met with him on at least five occasions prior to his hearing during which he waived his rights to counsel. [Motion for Payment, State v. Mullis, No. 08-Cr-0333 \(122nd Dist. Ct., Galveston County, Tex. undated\)](#).

³¹⁰ *See supra* notes 306 & 307.

³¹¹ [Tabler Attorney Bill](#), *supra* note 307, at entry dated Feb. 26, 2009.

³¹² *See supra* section IV.C.