



Appeals+ The Right Addition to Your Trial Team

[If An Appeal Is Not Available, Do I Have Any Other Options for Obtaining Higher Court Review?](#)

Posted on November 2, 2008 by [D. Todd Smith](#)

This is the fourth installment of my series entitled "[20 Questions About Texas Appellate Practice](#)." The question answered here is: "If an appeal is not available, do I have any other options for obtaining higher court review?" Visit the original post (linked above) for the list of questions updated with links to their respective answers.

If a court order cannot be appealed because it is [neither a final judgment nor otherwise made appealable by statute](#), relief may be available through the appellate courts' authority to issue extraordinary writs. The most common writ in civil matters is mandamus, which is an original proceeding filed directly in the issuing court. (The rules are different for habeas corpus, which is beyond the scope of this post.)

The Texas Supreme Court and the courts of appeals have concurrent jurisdiction to issue writs of mandamus in some circumstances. When that is the case, the petition usually must be presented to the court of appeals first.

To obtain mandamus relief, the requesting party—known as "the relator"—must show that the trial judge committed a clear abuse of discretion for which there is no adequate remedy at law.

The abuse of discretion standard is very deferential to the lower court's ruling. A court abuses its discretion by acting arbitrarily, unreasonably, or without reference to guiding principles. If the facts are disputed and the evidence conflicts, no abuse of discretion has occurred. But a trial court has no "discretion" in determining what the law is or applying the law to the facts. A clear failure by the trial court to analyze or apply the law correctly is an abuse of discretion.

Texas courts have struggled to define what constitutes an inadequate remedy at law. For many years, that requirement was satisfied only when parties were in danger of losing substantial rights. Merely showing that an appeal would involve more time, expense, or delay than a mandamus was not sufficient.

Recently, the Texas Supreme Court formulated a balancing test and concluded that an appellate remedy is adequate when the benefits obtained by permitting mandamus review are outweighed by the detriments of such review. Under the new standard, mandamus issues to correct significant rulings in exceptional cases, such as those involving important issues of first

impression, issues likely to recur, and issues that elude answer by appeal. The Court adopted the new standard to spare parties and the public the time and expense of unnecessary proceedings, preserve important rights from impairment or loss, and curtail the legislative enlargement of interlocutory appeals.

Commentators have expressed concerns that the new standard will lead to an increase in mandamus filings and an expansion beyond the writ's traditionally narrow scope. Time will tell whether those concerns are well founded.

Additional information is available [here](#).