Presented:
Conference on State and Federal Appeals
June 5 – June 6, 2014
Austin, Texas

A Prayer and A Hope: Effective Prayers to Get the Relief You Really Want

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"Under certain circumstances, profanity provides a relief denied even to prayer." – Mark Twain

I. Introduction

The prayer for relief is often seen as an afterthought to the appellate brief-writing process. Perhaps because the main sections of the brief have already presented the issues and the legal analysis, many appellate practitioners treat the prayer as a formal recitation—one that could easily be omitted if the rules did not require it to be included.

That approach to the prayer, however, unnecessarily limits the persuasive and informative power of the brief. Not only is a well-drafted prayer an important tool in a party's arsenal to convince the appellate court of his case, it also provides information indispensable to the judges and court staff who are tasked with crafting an opinion and judgment. An effective prayer can tip the scales in a party's favor. An ineffective or ill-advised prayer, on the other hand, can hamper or even ruin a party's chances for success.

This paper aims to offer guidance on writing effective prayers in Texas appellate courts. Part II begins by outlining the prayer requirements under the Texas Rules of Appellate Procedure, which unfortunately provide little guidance on the contents of an effective prayer. Parts III and IV then discuss the importance of the prayer—both from the court's perspective and from the client's—and the prayer's potential impact on the relief a party can hope to receive. Part V enumerates specific prayers most commonly found in appellate briefs, providing a reference for the practitioner who is drafting a brief and wants a checklist to guide his construction of the prayer. Finally, Part VI offers suggestions for correcting deficient prayers, including requests for leave to amend the prayer.

II. Overview of the Prayer Requirement

Texas Rule of Appellate Procedure 38.1(j) requires that an appellant's brief contain a "prayer"—a "short conclusion that clearly states the nature of the relief sought." TEX. R. APP. P. 38.1(j). The rules similarly require a prayer in most other briefs. *See, e.g., id.* 38.2(a)(1) (appellee's brief), 53.2(j) (petition for review), 53.3 (response to petition for review), 55.2(j) (petitioner's brief on the merits), 55.3 (respondent's brief on the merits). Likewise, any motion filed with an appellate court must "set forth the order or relief sought." *Id.* 10.1(a)(3). The rules do not explicitly require reply briefs to include a prayer, but typically a reply brief should include a prayer that reiterates the relief requested in the party's opening brief.

Other than the language above—"short conclusion that clearly states the nature of the relief sought"—the appellate rules provide little guidance on what the prayer should contain. Rule 43.2 comes closest to discussing the issue, as it establishes the six types of judgment an appellate court may enter on the merits. *See id.* 43.2 (allowing the court to: (a) affirm the judgment, (b) modify the

judgment, (c) reverse and render, (d) reverse and remand, (e) vacate the judgment, or (f) dismiss the appeal). Because the prayer must state the "nature of the relief sought," *id.* 38.1(j), a prayer should generally specify which of these six judgments the party is seeking. If the filing is one that does not seek a judgment—*e.g.*, a motion for extension of time to file a brief—the prayer should simply make clear the relief sought. *See id.* 10.1(a)(3).

Beyond the implicit guidance offered by Rule 43.2, appellate practitioners will not find much in the rules about how to draft an effective prayer. This paper will attempt to provide that guidance in the sections below, drawing from the Texas cases that have discussed the significance of prayers to the appellate process.

III. The Importance of the Prayer

An appellate court will often look to the prayer to ensure that the prevailing party receives the relief it requested. If the issues presented are complex or unclear, the court may even look to the prayer to determine what the case is really about. Thus, from the court's perspective, it is imperative that the prayer clearly state the relief sought.

Along with the summary of the argument, the prayer provides the most succinct and easily accessible overview of a party's case. From reading those two sections, a judge should be able to easily discern both the party's substantive argument and the procedural disposition the party seeks. Indeed, a judge who wishes to quickly refresh his memory about a case may turn immediately to those two sections of the brief (along with the table of contents). Particularly in courts with busier dockets—where months at a time may pass without activity on a case while the court works on other matters—it is crucial that the brief provide this necessary refresher through a clear and concise prayer.

Although practices vary, many courts and judges will use the prevailing party's prayer as a template for drafting the judgment. For that reason, the prayer should use the precise terminology that the prevailing party would want reflected in the judgment itself. Even if the brief's substantive argument leaves little doubt about the relief requested, the prayer should reiterate that request with specific reference to one (or more) of the possible judgments enumerated in Rule 43.2. If the party seeks some specific or unique form of relief not enumerated in Rule 43.2, the prayer should also include that request. *See infra* V (discussing particular prayers).

The prayer is especially important when the case turns on an issue that gives the court more than one option for the type of judgment to enter. For example, suppose a defendant appeals an interlocutory order granting class certification. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(3). On appeal, the defendant argues that the district court abused its discretion in finding that the proposed class met every requirement for certification under Texas Rule of Civil Procedure 42. If the court agrees with the defendant, it will have discretion either to reverse and remand the case (presumably with instructions to guide a new certification analysis by the district court), or simply to render judgment for the defendant. *See Phila. Am. Life Ins. Co. v. Turner*, 131 S.W.3d 576, 585 (Tex. App.—Fort Worth 2004, no pet.); *Kondos v. Lincoln Prop. Co.*, 110 S.W.3d 716, 723–24 (Tex. App.—Dallas 2003, no pet.). Depending on how the defendant framed his substantive arguments, it may not be clear which disposition he expects. The defendant can use the prayer to

make that choice clear—*e.g.*, "Defendant prays that the court reverse the order granting certification and render judgment for Defendant."

The prayer can also help the court understand an otherwise ambiguous brief. When a party's issues presented and argument do not make clear exactly what is being appealed, many courts will "look[] to [the] party's prayer for relief to determine what standard of review to apply." *Benavente v. Granger*, 312 S.W.3d 745, 747 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (collecting cases). One relatively common ambiguity arises when an appellant complains about the sufficiency of the evidence, but does not specify whether he is raising a legal-sufficiency point, a factual-sufficiency point, or both. *See, e.g.*, *Airway Ins. Co. v. Hank's Flite Ctr., Inc.*, 534 S.W.2d 878, 882 (Tex. 1976); *K & N Builder Sales, Inc. v. Baldwin*, No. 14–12–00012–CV, 2013 WL 1279292, at *4 & n.1 (Tex. App.—Houston [14th Dist.] Mar. 28, 2013, pet. denied). In this situation, courts may use the appellant's prayer to resolve the ambiguity. *See Airway Ins.*, 534 S.W.2d at 882 (citing Robert W. Calvert, *'No Evidence' and 'Insufficient Evidence' Points of Error*, 38 TEX. L. REV. 361, 362, 372 (1960)). Thus, when the appellant prays that the case "should be . . . reversed and remanded," courts may construe the issue as one of factual sufficiency. *See id.*; *see also Glover v. Tex. Gen. Indem. Co.*, 619 S.W.2d 400, 401–02 (Tex. 1981) (noting that remand is the appropriate remedy for a factual-sufficiency point). In contrast, when the appellant prays that "the judgment be set aside and that this court enter a finding [for the appellant], *i.e.*, reversal and rendering," courts may construe the issue as one of legal sufficiency. *See K & N Builder Sales*, 2013 WL 1279292 at *4 & n.1; *accord Seitel Data, Ltd. v. Simmons*, 362 S.W.3d 782, 795 (Tex. App.—Texarkana 2012, no pet.); *Grindinger v. Kixmiller*, No. 2–06–211–CV, 2007 WL 529954, at *1 n.2 (Tex. App.—Fort Worth Feb. 22, 2007, pet. denied); *see also Horrocks v. Tex. Dep't of Transp.*, 852 S.W.2d 498, 499 (Tex. 1993) (noting that rendition of judgment is generally the appropriate remedy for a legal-sufficiency point).

The prayer is also important from the client's perspective. Because the prayer outlines the relief sought, it can serve as a roadmap for the attorney to manage client expectations. Early analysis of the relief sought—and the likelihood of receiving that relief—can help guide settlement decisions and appellate strategy. For particularly "hands-on" clients, the lawyer may even want to circulate a draft of the prayer early in the brief-writing process, which may help foster this dialogue. The client's general counsel may also find the prayer useful when debriefing executives or other non-lawyers at the company about the status and possible outcomes of the appeal.

IV. The Prayer's Impact on Available Relief

Perhaps the most important aspect of the prayer is how its contents may (or may not) affect what relief the client can receive if the appeal is successful. There are two sides to this issue: (a) whether a party can receive relief that is not requested in his prayer (*i.e.*, whether the prayer can *limit* the available relief), and (b) whether a party can receive relief that is requested in his prayer but is not mentioned elsewhere in his brief (*i.e.*, whether the prayer can *expand* the available relief).

A. Limiting the Available Relief

By definition, the prayer states the "relief sought." TEX. R. APP. P. 38.1(j). Arguably, this implies that an appellate court cannot grant any relief if the prayer does not request it. *See State v. Brown*, 262 S.W.3d 365, 370 (Tex. 2008) ("A party generally is not entitled to relief it does not

seek."); *see also Stevens v. Nat'l Educ. Ctrs., Inc.*, 11 S.W.3d 185, 186 (Tex. 2000); *Horrocks*, 852 S.W.2d at 499. On this issue, Professors Roy McDonald and Elaine Carlson have suggested that Texas appellate courts have sometimes reached different results:

> Courts in some cases have strictly conformed to the prayer in regard to the relief they would grant on appeal. Regardless of the relief the party would otherwise be entitled to receive, the party could receive only the relief for which he or she prayed. In other cases, courts have been willing to vary from the relief requested in the prayer where the brief as a whole has shown an entitlement to such relief.

6 Roy W. McDonald & Elaine A. Grafton Carlson, *McDonald & Carlson – Texas Civil Practice* § 41:5 (2d ed. 1999) (footnotes omitted).

McDonald and Carlson cite several cases where Texas courts have held that relief was unavailable to a party because the party did not pray for it. *Id.* (citing *Tex. Prudential Ins. Co. v. Dillard*, 307 S.W.2d 242, 252 (Tex. 1957); *Hampton v. State Farm Mut. Auto. Ins. Co.*, 778 S.W.2d 476, 480 (Tex. App.—Corpus Christi 1989, no writ); *Tex. Fed. Sav. & Loan Ass'n v. Sealock*, 737 S.W.2d 870, 877 (Tex. App.—Dallas 1987), *rev'd on other grounds*, 755 S.W.2d 69 (Tex. 1988); *West End API Ltd. v. Rothpletz*, 732 S.W.2d 371, 374, (Tex. App.—Dallas 1987, writ ref'd n.r.e.)). On the other hand, they also cite cases where Texas courts have granted relief even though the party did not pray for it. *Id.* (citing *Res. Sav. Ass'n v. Neary*, 782 S.W.2d 897, 903–04 (Tex. App.—Dallas 1989, writ denied); *Kaspar v. Thorne*, 755 S.W.2d 151, 157–58 (Tex. App.—Dallas 1988, no writ); *Olin Corp. v. Dyson*, 678 S.W.2d 650, 657 (Tex. App.—Houston [14th Dist.] 1984), *rev'd on other grounds*, 692 S.W.2d 456 (Tex. 1985)).

Regarding the former category of cases—where courts have refused to grant relief not requested—it is important to draw a distinction between the prayer for relief alone and the brief at large. In three of the four cases cited by McDonald and Carlson, the appellate court declined to grant relief that the party failed to request *anywhere* in its brief—whether in the prayer or elsewhere. *See Tex. Prudential Ins.*, 307 S.W.2d at 252 ("[W]e note that the respondent's otherwise elaborate brief contains no [alternative] request for a remand in the event we should agree, as we do, with the position of the petitioner on the issue mentioned."); *Hampton*, 778 S.W.2d at 480 ("[A]ppellant did not complain about interest *or* pray for prejudgment interest and penalties before our opinion was handed down." (emphasis added)); *West End*, 732 S.W.2d at 374 ("Owners have given no indication anywhere in their briefs that they desire a new trial . . . .").

Other cases have reached the same result where the party simply did not raise a point of relief anywhere in its brief. *See, e.g., Seitel Data*, 362 S.W.3d at 795 (appellant did not raise factual sufficiency in its issues or argument, and its prayer did not request a remand). But this result should not be controversial, as it is well-established that a party waives an issue by failing to mention it in his opening brief (*i.e.*, briefing waiver). *See Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994); *see* TEX. R. APP. P. 38.1(i) (providing that the brief must contain "clear and concise argument" with "appropriate citations to authorities and to the record"); *see also Howell v. Tex. Workers' Comp. Comm'n*, 143 S.W.3d 416, 439 (Tex. App.—Austin 2004, pet. denied) ("The rules of appellate procedure do not allow an appellant to include in

a reply brief a new issue [not raised in the opening brief] . . . ."). A comprehensive discussion of briefing waiver is outside the scope of this paper.

In another case, the Texas Supreme Court held that a party could not receive remand where it had "*specifically requested* that this Court not remand for a new trial." *Stevens*, 11 S.W.3d at 186 (emphasis added). Again, that result is hardly controversial: a court has no reason to grant relief that the benefitting party specifically asks the court not to grant.

For purposes here, the more pertinent question is whether a party can receive relief when he presents an issue and argues it, but then *does not* include the appropriate request for relief in his prayer. The fourth case cited by McDonald and Carlson, *Texas Federal Savings & Loan*, appears to suggest that failing to request relief in the prayer waives the party's right to that relief. In that case, the appellee argued that the trial-court judgment in his favor be affirmed. *Id.* at 877. He also argued in the alternative that, if the judgment in his favor was "set aside for any reason, then this court can render judgment based upon [an alternative theory]." *Id.* The court of appeals, however, noted that the appellee's prayer for relief did not request rendition of judgment—instead, the appellee prayed only for affirmance. *Id.* Thus, the court held that it could not render judgment for the appellee on his alternative theory, even though the alternative theory had been raised in the body of appellee's argument. *Id.*

Since *Texas Federal Savings & Loan*, two other Texas courts have stated that a court "cannot grant relief that a party fails to request"—*e.g.*, "[i]f an appellant requests reversal and rendition of judgment, an appellate court will not reverse and remand." *Jay Petroleum, LLC v. EOG Res., Inc.*, 332 S.W.3d 534, 538 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (citing *Molina v. Moore*, 33 S.W.3d 323, 327 (Tex. App.—Amarillo 200, no pet.)). Yet neither of these cases actually held that a party could not receive relief (*i.e.*, a remand for a new trial) because of a defect in that party's prayer. In *Molina*, the court rendered judgment on appellant's primary argument and did not need to reach the remand issue. 33 S.W.3d at 329. And in *Jay Petroleum*, the court actually *rejected* the contention that the appellee's prayer asked for rendition only and did not allow for a remand. 332 S.W.3d at 538–39.

Texas Federal Savings & Loan notwithstanding, the better-reasoned decisions hold that failure to request relief in the prayer does not preclude relief to which the party is otherwise entitled. *See, e.g.*, *Garza v. Cantu*, --- S.W.3d ----, No. 14–11–00724–CV, 2013 WL 5451592, at *9–10 (Tex. App.—Houston [14th Dist.] Aug. 27, 2013, pet. denied); *Majeed v. Hussain*, No. 03–08–00679–CV, 2010 WL 4137472, at *7–9 (Tex. App.—Austin Oct. 22, 2010, no pet.); *Kaspar*, 755 S.W.2d at 158–59. In *Garza*, the court of appeals explained that the relevant appellate rules—not the prayer for relief—determine the disposition of the case. 2013 WL 5451592, at *9. If a party has "clearly presented" a point of error somewhere in his brief, the prayer's failure to request a particular disposition "does not prevent an appellate court from granting such relief." *Id.* (citing *Olin Corp*, 678 S.W.2d at 657). Thus, the court remanded for a new trial even though the appellant's brief requested rendition only. *Id.* at *9–10.

The Austin court of appeals held similarly in *Majeed*. There, the appellant's brief had raised both legal and factual sufficiency points in the argument, but the prayer had requested only rendition of judgment (which is the appropriate remedy for legal insufficiency, but not factual

insufficiency). *Majeed*, 2010 WL 4137472, at *7–8. The court held that this sort of briefing defect "should either have no impact on the appellate court's judgment," or is one that the party "should be permitted to cure." *Id.* at *8; *see also infra* VI (discussing the possibility of amending a prayer to cure a defect). Thus, the court remanded for a new trial on the appellant's successful factual-sufficiency point. *Id.* at *12.

Likewise, in *Kaspar*, the court initially held that failing to pray for rendition of judgment prevented the party from receiving that relief. 755 S.W.2d at 156. But the court later reversed course, issuing a supplemental opinion on a motion for rehearing. *Id.* The court correctly distinguished *Texas Federal Savings & Loan* and *West End*—discussed above—as cases addressing whether an appellate brief had preserved an issue *at all*. *Id.* at 157. The court held that, when an issue calling for rendition of judgment has been properly presented elsewhere in the brief, "the omission of a prayer for rendition of judgment will not preclude rendition in an appropriate case." *Id.* at 158.

In contrast to the strict holding of *Texas Federal Saving & Loan*, cases like *Garza*, *Majeed*, and *Kaspar* offer the better-reasoned approach because they more closely align with the appellate rules. Rule 38.9 requires courts to apply the briefing rules "liberally." TEX. R. APP. P. 38.9. In the event of a defect in a brief, the rules expressly provide that "substantial compliance" is sufficient. *Id.* With this principle in mind, declining to grant relief solely because of a defect in the prayer—even where the party has otherwise fully presented the issue requiring that relief—would elevate form over substance. That restrictive result would be particularly inappropriate under Rule 38.9's mandate of "liberal[]" construction because, although the appellate rules say that the prayer should state the "relief sought," *id.* 38.1(j), they do not say that the prayer is the *only* portion of the brief that can establish the available relief. Given that the purpose of the brief is simply to "acquaint the court with the issues" so that the court can decide the merits, *id.* 38.9, the party's substantive arguments should be more important than the formal request for relief contained in the prayer.

B. Expanding the Available Relief

The previous section discussed how the prayer may potentially limit the relief available to a party, at least under certain Texas precedents. In some situations, however, a well-drafted prayer can actually *expand* the available relief.

Although the case law in this area is somewhat scattershot, courts have occasionally used a party's prayer to "save" an issue that otherwise would have been waived due to inadequate briefing. For instance, one court held that a request for attorney's fees in the prayer preserved the party's statutory right to fees, even where the brief presented no substantive argument for fees. *Elaazami v. Lawler Foods, Ltd.*, No. 14–11–00120–CV, 2012 WL 376687, at *6 (Tex. App.—Houston [14th Dist.] Feb. 7, 2012, pet. dism'd). In the criminal context, another court graciously held that the appellant's prayer—which requested in the alternative both rendition of judgment or remand—preserved both legal and factual sufficiency challenges, even though the appellant's argument did not address legal sufficiency at all. *Estrella v. State*, No. 13–04–519–CR, 2006 WL 488647, at *1 n.1 (Tex. App.—Corpus Christi Mar. 2, 2006, no pet.). In a similar vein, other cases have held that a "general" prayer for relief—which many practitioners will include as a "catch-all" for any relief not specifically requested—may preserve certain issues not explicitly discussed

elsewhere in the brief. *See infra* V.M (discussing "general" prayers and these cases).

That said, a practitioner generally should not attempt to preserve an issue by relying solely on the prayer for relief. Although certain requests may be minor enough to warrant mention only in the prayer—*e.g.*, a request for costs of appeal (*see infra* V.I)—any issue of substance should be raised in the argument with "appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i); *see also id.* 52.3(h), 53.2(i), 55.2(i).

V. Particular Prayers

There is no single template for drafting an effective prayer. Theoretically, a prayer could request any relief that a court could feasibly grant under its constitutional and statutory authority. That said, most prayers will fall into one or more of the well-established categories outlined below. Although the list and examples below are not exhaustive, they may provide a useful reference for a practitioner who is drafting a prayer and wants to maximize his client's avenues for possible relief.

A. Affirmance

Perhaps the most basic of all appellate prayers, a party may request that the court "affirm the trial court's judgment in whole." TEX. R. APP. P. 43.2(a); *see also id.* 60.2(a). This request is appropriate for an appellee who prevailed below and is completely satisfied with the judgment of the trial court. A party may also request that the trial court's judgment be affirmed "in part." *Id.* This request is appropriate if the party is satisfied with only part of the judgment, but wants the court to reverse or modify another part of the judgment. A request for partial affirmance may often accompany a request for full affirmance, as an alternative prayer for relief. *See infra* V.G (discussing prayers for alternative relief).

B. Modification

A party may request that the appellate court "modify the trial court's judgment and affirm it as modified." TEX. R. APP. P. 43.2(b); *see also id.* 60.2(b). This request is appropriate where the judgment contains an error that can be fixed by the court of appeals without the need to reverse the existing judgment—for example, an error in calculating or awarding damages. *See, e.g.*, *Hot-Hed, Inc. v. Safehouse Habitats (Scotland), Ltd.*, 333 S.W.3d 719, 734–35 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (modifying judgment to add sentence awarding post-judgment interest); *Dal-Chrome Co. v. Brenntag Sw., Inc.*, 183 S.W.3d 133, 144–45 (Tex. App.—Dallas 2006, no pet.) (modifying judgment that improperly awarded four times economic damages for a Deceptive Trade Practices Act claim, which is capped at three times economic damages). In particular, a party may seek modification of the judgment for certain remittitur issues (*see infra* V.K), and for various issues involving attorney's fees. *See, e.g.*, *Gilbert v. City of El Paso*, 327 S.W.3d 332, 337 (Tex. App.—El Paso 2010, no pet.) ("The proper remedy for an unconditional award of appellate attorney's fees is to modify the judgment so that the award depends on the paying party's lack of success on appeal."); *Fidelity & Cas. Co. of N.Y. v. Rust*, No. 05–97–01509–CV, 2001 WL 51066, at *3–4 (Tex. App.—Dallas Jan. 23, 2001, pet. denied) (modifying judgment to reflect that attorney's fees awarded to prevailing party's counsel should be paid out of the prevailing party's recovery).

C. Reversal and Rendition

A party may request that the appellate court "reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered." TEX. R. APP. P. 43.2(c); *see also id.* 60.2(c). A request for partial reversal—whether reversal and rendition or reversal and remand—often goes hand-in-hand with a request for partial affirmance. The party will request that the court affirm the favorable portion of the judgment while reversing the unfavorable portion.

When the court of appeals reverses a judgment, it generally must "render the judgment that the trial court should have rendered." TEX. R. APP. P. 43.3. In other words, the presumption is that the court of appeals will reverse and render, not reverse and remand (though there are two exceptions to this rule, discussed below). *See id.* To track this rule, the appellant's prayer should often request reversal and rendition of the judgment to which the appellant believes he is entitled. *See id.* Instead of a boilerplate request for rendition—*e.g.*, "Appellant requests that the court render judgment in his favor"—a well-drafted prayer should clearly specify the particular judgment the appellant wants. In a legal-sufficiency appeal from a jury trial, for instance, a well-drafted prayer might say, "Defendant asks this Court to render judgment that Plaintiff take nothing on all of his claims."

When a party seeks rendition of judgment but also seeks a remand in the alternative, *see infra* V.G, the prayer for relief should typically request rendition *before* making the alternative request for remand. Although appellate courts error by failing to address a rendition issue before a remand issue, *Bradley's Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 676–77 (Tex. 1999) (per curiam), requesting rendition first in the prayer makes clear that the party wants the court to consider remanding the case only if it first rejects the request for rendition. This mitigates the possibility that the party's opponent will argue—even if unsuccessfully—that the party prioritized his remand issue over his rendition issue.

D. Reversal and Remand

A party may request that the appellate court "reverse the trial court's judgment and remand the case for further proceedings." TEX. R. APP. P. 43.2(d); *see also id.* 60.2(d). Reversal and remand—rather than reversal and rendition—is appropriate in two circumstances: (1) when a remand is necessary for further proceedings, or (2) when the interests of justice require a remand for another trial. *Id.* 43.3; *see also id.* 60.3. These exceptions are broadly worded, creating potentially countless scenarios in which a remand may be the appropriate disposition.

When drafting the prayer, the practitioner should consider whether the issues, facts, and applicable law call for remand under Rule 43.3. Most appellate practitioners are familiar with the common points of error that make a remand "necessary for further proceedings" under Rule 43.3(a)—*e.g.*, erroneous admission or exclusion of evidence (*see, e.g., Am. Home Assurance Co. v. Lara*, 967 S.W.2d 907, 910 n.10 (Tex. App.—El Paso 1998, pet. denied)), factual insufficiency (*see, e.g.*, *Glover*, 619 S.W.2d at 401–02)), or submission of a "defective" question to the jury (*see, e.g., Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 44 (Tex. 2007)).

But practitioners should also keep in mind the more nebulous possibility of a remand in "the interests of justice" under Rule 43.3(b). Rule 43.3(b) effectively confers the appellate courts with discretion to remand a case on *any* issue, even those that generally would require rendition for the prevailing party. *See Kondos*, 110 S.W.3d at 724 (noting that courts have "broad discretion" to remand in the interest of justice); *see also Boyles v. Kerr*, 855 S.W.2d 593, 603 (Tex. 1993). Remand in the interest of justice may be appropriate in the following scenarios, among others:

- when Texas courts have changed or clarified the applicable law after trial and while the appeal is pending, *see, e.g.*, *R.R. Street & Co. v. Pilgrim Enters., Inc.*, 166 S.W.3d 232, 254–55 (Tex. 2005); *Scott v. Liebman*, 404 S.W.2d 288, 294 (Tex. 1966), *abrogated on other grounds*, *Parker v. Highland Park, Inc.*, 565 S.W.2d 512, 517 (Tex. 1978);

- when the Texas Supreme Court has for the first time—while the case was pending on appeal—formally recognized a cause of action that may have applied to the case, *see, e.g.*, *Boyles*, 855 S.W.2d at 603;

- when the record has not been fully developed, *see, e.g.*, *Kondos.*, 110 S.W.3d at 724;

- when an issue has been raised for the first time in a motion for rehearing, and the court wishes neither to resolve that issue on the merits nor to hold that the issue has been waived, *see, e.g. 7-Eleven, Inc. v. Combs*, 311 S.W.3d 676, 696 (Tex. App.—Austin 2010, pet. denied); and

- when a jury verdict was generally favorable to the appellant but failed to include essential findings required for the appellant's recovery, *see, e.g.*, *Dahlberg v. Holden*, 238 S.W.2d 699, 704 (Tex. 1951).

Under the better-reasoned approach, an appellate court likely has discretion to remand in the interest of justice even if the benefitting party does not request that disposition in his prayer. *See, e.g.*, *Kaspar*, 755 S.W.2d at 157 ("[I]t is [the relevant appellate rule], and not the prayer for relief, that determines the disposition of the case."); *see also supra* IV.A. As a strategic matter, however, the appellant may in some cases want to explicitly include such a request in his prayer as an alternative to his request for rendition of judgment. For instance, the appellant might pray that the court render judgment in his favor on a legal-sufficiency point, or in the alternative at least remand in the interest of justice on the legal-sufficiency point. Although the latter request probably is not required to preserve the possibility of a remand, it could in some cases make the appellant's case more palatable, particularly if the appellant's substantive argument on legal sufficiency is not especially compelling. In other words, the court may be more inclined to reverse in the appellant's favor if the appellant reminds the court that it can remand for further proceedings, rather than rendering judgment outright.

Correspondingly, the appellee may sometimes want to request a remand in the interest of justice as a defensive matter—*i.e.*, in the alternative to a request that the court of appeals affirm the favorable judgment below. Although the appellee should carefully consider whether it is strategically wise to include this request, it could be worthwhile if the appellee is concerned that the appellant has an especially strong argument for rendition of judgment. *Cf. Harris Cnty. Appraisal*

Dist. v. Wilkerson, 911 S.W.2d 84, 90–91 (Tex. App.—Houston [1st Dist.] 1995, writ denied) (noting that the appellee, after suffering reversal and rendition of judgment against it, had urged the court on rehearing to instead consider remanding the case in the interest of justice because the case involved an issue of first impression). When used judiciously, this alternative request for a remand in the interest of justice may allow the appellee to hedge his bets about the outcome of the appeal.

Finally, the practitioner drafting an effective prayer should keep in mind the possibility of a partial remand. *See* TEX. R. APP. P. 44.1(b) ("If the error affects part of, but not all, the matter in controversy and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error."); *see also id.* 61.2. Depending on the issues presented, the appellant may request that the court render judgment in part and remand for further proceedings in part. *See, e.g.*, *All Am. Life Ins. Co. v. Rylander*, 73 S.W.3d 299, 303 (Tex. App.—Austin 2001, pet. denied) (rendering judgment that the Comptroller refund taxable amounts to plaintiff taxpayers, and remanding for determination of those amounts as liquidated damages). If the prayer does request a partial remand, the brief's argument should make clear why that part of the case is separable "without unfairness to the parties." TEX. R. APP. P. 44.1(b). Notably, an appellate court cannot grant a partial remand solely on unliquidated damages if liability is contested. *Id.*

E. Vacatur

A party may request that the appellate court "vacate the trial court's judgment and dismiss the case." TEX. R. APP. P. 43.2(e); *see also id.* 60.2(e). Typically, this disposition is jointly requested by the parties after agreeing to settle the dispute. *See, e.g.*, *EPGT Tex. Pipeline, L.P. v. K-W Constr., Inc.*, No. 03–03–00272–CV, 2004 WL 334499, at *1 (Tex. App.—Austin Feb. 9, 2004, no pet.); *Denar, LLC v. Denny's, Inc.*, No. 2–06–084–CV, 2006 WL 2382887, at *1 (Tex. App.—Fort Worth Aug. 17, 2006, no pet.); *see also* TEX. R. APP. P. 42.1(a) (establishing that an appellate court may enter judgment based on the parties' agreement). Vacating the judgment and dismissing the cause—rather than just dismissing the appeal (*see infra* V.F)—prevents the direct and collateral consequences that arise from the existence of the judgment.

A party may also pray for this disposition if he believes that the court has lost jurisdiction over the case—*e.g.*, because the dispute has become moot. In that situation, the party could file a motion to dismiss with the appellate court, which would pray that the court vacate the judgment below and dismiss the case. *See City of Garland v. Louton*, 691 S.W.2d 603, 604–05 (Tex. 1985) (per curiam) (holding that, when a case becomes moot, dismissing the *case*—not just the appeal—is the appropriate disposition).

The language of Rule 43.2(e) does not authorize vacating the judgment without also dismissing the case. *See* TEX. R. APP. P. 43.2(e). Thus, the rule does not appear to contemplate that an appellate court could vacate the judgment on the merits and remand to the trial court for further proceedings. *See Blair v. Fletcher*, 849 S.W.2d 344, 345 & n.3 (Tex. 1993) (rejecting the court of appeals' suggestion that it had "inherent power" to vacate and remand even though the rules do not confer that power).[1] Yet some Texas courts appear to have done exactly that, vacating

[1] Although the intermediate courts of appeals lack authority to vacate and remand, the Texas Supreme Court—like the United States Supreme Court—has authority to vacate a court of appeals judgment and remand to that court in

a judgment in a contested appeal and remanding for further proceedings consistent with the court of appeals' opinion. *See, e.g.*, *Carter v. Estrada*, No. 13–02–568–CV, 2003 WL 22479213, at *1 (Tex. App.—Corpus Christi Oct. 30, 2003, no pet.) (holding that service of process on the defendant was invalid and thus "vacat[ing] the default judgment and remand[ing] for further proceedings"). Although these opinions have used the word "vacate," they are more accurately classified as decisions *reversing and remanding* the trial court's judgment on the merits under Rule 43.2(d). *Cf. Blair*, 849 S.W.2d at 345 (explaining that a court of appeals must decide the merits of an appeal by either "affirming, reversing, or modifying" the judgment below). Because a well-drafted prayer should track the precise terminology of Rule 43.2, a prayer should not request that the court of appeals "vacate and remand" on the merits. Instead, the prayer should request that the court of appeals "reverse and remand."

F. Dismissal of the Appeal

A party may pray that the court "dismiss the appeal." TEX. R. APP. P. 43.2(f). Dismissing the appeal under Rule 43.2(f) differs crucially from vacating and dismissing the case under Rule 43.2(e). In the latter situation, as just explained, the trial-court judgment no longer exists. But in this situation—where the appellate court dismisses only the appeal—the trial-court judgment remains intact as though the appeal had never been taken. *See Robertson v. Land*, 519 S.W.2d 227, 229 (Tex. Civ. App.—Tyler 1975, no writ) (explaining that "dismissal of appellants' appeal, in effect, affirms the judgment" without deciding the merits).

A prayer requesting dismissal may often come in a separate motion to dismiss, rather than in the party's principal brief. An appellee should request dismissal of the appeal if the appellant has failed to invoke the appellate court's jurisdiction, failed to prosecute the appeal, or failed to comply with a time limit prescribed by the appellate rules (*e.g.*, the time limit for filing an appellant's brief). *See, e.g.*, *Sanchez v. Walter Mortg. Co.*, No. 04–13–00881–CV, 2014 WL 1233688, at *1 (Tex. App.—San Antonio Mar. 26, 2014, no pet.) (granting motion to dismiss appeal for lack of jurisdiction because notice of appeal had not been timely filed).

G. Alternative Relief

Many of the examples above have alluded to the possibility of alternative prayers for relief. When a party has multiple arguments on appeal and those arguments would require different appellate judgments under Rule 43.2, the party should pray in the alternative for each requested judgment in the appropriate order of priority. Suppose for example that an appellant is raising both legal and factual sufficiency challenges in the court of appeals. As noted above, a successful legal-sufficiency point typically requires rendition of judgment. *Glover*, 619 S.W.2d at 401–02. Meanwhile, a successful factual-sufficiency point requires a remand for a new trial. *Horrocks*, 852 S.W.2d at 499. To properly request relief on both challenges, the appellant's prayer should ask the court to (1) reverse and render judgment in his favor on the legal-sufficiency point (under Rule 43.2(c)), and (2) in the alternative, reverse and remand for a new trial on the factual-sufficiency point (under Rule 43.2(d)).

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light of changes in the law. TEX. R. APP. P. 60.2(f); *Blair*, 849 S.W.2d at 345–46 & n.4 (citing *Stringer v. Black*, 494 U.S. 1074 (1990)).

Although alternative prayers are especially common when a party has raised multiple issues on appeal, a party may also pray for alternative relief on a single issue. In the hypothetical above, for instance, the appellee would argue that the evidence was legally sufficient to support the judgment and that the judgment should thus be affirmed under Rule 43.2(a). But on the legal-sufficiency issue, the appellee may in certain cases also want to pray in the alternative that, in the event the court finds the evidence to be legally insufficient, it remand for a new trial in the interest of justice instead of rendering judgment in the appellant's favor. *See supra* at 10–11.

A well-drafted prayer should clearly and explicitly delineate when the party is seeking alternative relief. One court of appeals decision, *Hunt v. Ellisor & Tanner, Inc.*, 739 S.W.2d 933 (Tex. App.—Dallas 1987, writ denied), provides a good example. There, the appellants brought two points of error challenging the adequacy of a $41,500 jury damages award in their favor, and a third point of error regarding the submission of a comparative-causation issue to the jury (which also implicated a cross-point raised by the appellee). *Id.* at 938–39, 943. The court of appeals overruled the appellants' first two points, but sustained their third point. *Id.* at 943. To determine what judgment to render under the predecessor to Rule 43.2(c), the court looked to appellants' prayer for relief. In their prayer, appellants had asked: "Alternatively, *and only in the event the court finds the damage award was adequate but the comparative causation submission was error* [appellants] request[] the court [to] render judgment for $41,500." *Id.* (emphasis added). Through the emphasized language, the appellants made clear that they were not conceding the adequacy of the $41,500 damages award, and that they desired judgment on that award only if the court of appeals rejected their damages-adequacy challenges. The court properly construed this request as an alternative prayer for relief, and thus rendered judgment for appellants in the amount of $41,500. *Id.* at 944.

H. Temporary Relief

A party may request that an appellate court "issue any temporary orders necessary to preserve the parties' rights." TEX. R. APP. P. 24.4(c); *see also id.* 29.3–29.4, 52.10 (authorizing temporary relief in original proceedings). To obtain this temporary relief, a party may file a motion in the appellate court under the applicable appellate rule. The motion should include a prayer clearly specifying the temporary relief requested. *See id.* 10.1(a)(3).

I. Costs

The rules provide that the court of appeals' judgment should award costs of appeal to the prevailing party. TEX. R. APP. P. 43.4. Rule 43.4, however, also stipulates that the court may choose to tax costs otherwise "as required by law or for good cause." *Id.* Absent some specific reason not to seek costs, the prayer in a party's opening brief should typically include a boilerplate request for costs.

For purposes of Rule 43.4, "costs" include (1) the fee paid to the trial-court clerk for preparation of the clerk's record; (2) the fee paid to the court reporter for preparation of the reporter's record; and (3) the fee paid to the court of appeals clerk for filing the appeal. *Koval v. Henry Kirkland Contractors, Inc.*, No. 01–06–00067–CV, 2008 WL 458295, at *8 (Tex. App.—Houston [1st Dist.] Feb. 15, 2008, no pet.) (citing TEX. R. APP. P. 43.4, 51.1). If the prevailing party seeks any other monetary relief associated with prosecution of the case—*e.g.*, attorney's

fees—the prayer in the party's first brief should specifically request that relief.

J. Attorney's Fees

The appellate rules do not mention attorney's fees, but in some situations a party may wish to include a request for fees in its prayer for relief. As a rule of thumb, a party should specifically pray for fees if there is any colorable basis for seeking them, as a "general" prayer may not be construed as including a request for fees. *See Klaver v. Klaver*, 764 S.W.2d 401, 405 (Tex. App.—Fort Worth 1989, no writ) (holding that a "general" prayer for relief cannot sustain an award of attorney's fees).

To fully preserve a request for attorney's fees, a party should make that request in the trial court, include a request for fees in the prayer of his appellate brief, and then specifically ask that the appellate court remand the issue to the trial court for a hearing and a fee award. *Harris Cnty. Children's Protective Servs. v. Olvera* [*Olvera I*], 971 S.W.2d 172, 176 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). If the party fails to include the fee request in the prayer of his appellate brief, the court may render a take-nothing judgment against him. *See, e.g.*, *Harris Cnty. Children's Protective Servs. v. Olvera* [*Olvera II*], 77 S.W.3d 336, 339 & n.2, 344 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (rendering a take-nothing judgment because "[appellees] never requested this court to remand the issue of appellate attorneys' fees"). Also, if the prayer requests attorney's fees but the brief's argument does not make clear the basis for fees, some appellate courts may hold that the request for fees has been waived. *See Mullinax, Wells, Baab, & Cloutman, P.C. v. Sage*, 692 S.W.2d 533, 536 (Tex. App.—Dallas 1985, writ ref'd n.r.e.). *But see Elaazami*, 2012 WL 376687, at *6 ("[W]e decline to hold that Elaazami 'waived' his statutory right to attorney's fees by failing to cite authority in his opening brief.").

As just noted, a prayer for appellate fees should generally ask the court to reverse and remand to the trial court under Rule 43.2(d). *See Olvera I*, 971 S.W.2d at 176. But if the party instead prays that the appellate court itself render judgment awarding fees, some courts may liberally construe that request as seeking a remand to the trial court for determination of the fee award. *See, e.g.*, *Tex. Wood Mill Cabinets, Inc. v. Butter*, 117 S.W.3d 98, 107 (Tex. App.—Tyler 2003, no pet.); *Arthur P. Gale Realtors v. Belisle*, 694 S.W.2d 195, 198 (Tex. App.—Dallas 1985, no writ).

K. Remittitur

The appellate rules contain several provisions addressing remittitur in the trial court and the court of appeals. TEX. R. APP. P. 46.1–46.5. In appropriate cases, a party may pray on appeal for relief under the applicable remittitur rule.

First, if the trial court suggests a remittitur, but the appeal is perfected before the remittitur is filed, the party making the remittitur may do so in the court of appeals (instead of waiting for the case to be remanded to the trial court). *Id.* 46.1 When this happens, the party benefitting from the remittitur may pray that the court of appeals "render the judgment that the trial court should have rendered"—*i.e.*, if the remittitur had been made in the trial court. *Id.*

Second, if a party makes a remittitur at the trial court's suggestion, but then the other party files an appeal, the remitting party can cross-appeal whether the remittitur should have been required (but importantly, the remitting party must perfect its own appeal to raise that point). *Id.* 46.2. The remitting party's prayer may request that the court of appeals render judgment that the remittitur should not have been required, either in whole or in part. *Id.*

Third, if a party requests that the court of appeals itself suggest a remittitur, the party may pray for that relief under Rule 46.3. The party may pray that (1) if the remittitur is timely filed, the court of appeals should modify and affirm the trial court's judgment "in accordance with the remittitur," *id.* 46.3; *see, e.g.*, *Mustafa v. Matrut*, No. 01–08–00985–CV, 2010 WL 1839944, at *1 (Tex. App.—Houston [1st Dist.] May 6, 2010, no pet.); and (2) in the alternative, if the remittitur is not timely filed, the court of appeals should reverse and remand for a new trial, *see* TEX. R. APP. P. 46.3; *see, e.g.*, *City of Laredo v. Montano*, 415 S.W.3d 1, 8–9 (Tex. App.—San Antonio 2012, no pet.).

Finally, if the court of appeals reverses a judgment because of a legal error affecting the amount of damages, the affected party may voluntarily offer, within 15 days of the court of appeals' judgment, to remit the amount he believes will cure the reversible error. TEX. R. APP. P. 46.5. The party should offer this voluntary remittance in a motion for rehearing, and doing so does not waive any complaint that the court of appeals erred in reversing the judgment. *Id.* In the motion for rehearing, the party may pray that the court of appeals—instead of reversing the judgment—modify and affirm the judgment "in accordance with the remittitur." *Id.*; *see, e.g.*, *City of Emory v. Lusk*, 278 S.W.3d 77, 89–90 (Tex. App.—Tyler 2009, no pet.). If the court of appeals agrees that the voluntary remittitur sufficiently cures the reversible error, the court *must* accept the party's request to modify and affirm the judgment accordingly. TEX. R. APP. P. 46.5.

L. Sureties

The appellate rules provide that, when an appellate court enters judgment against the appellant (or in the case of the Texas Supreme Court, against the party who was the appellant in the court of appeals), the court must render judgment against the sureties on that party's supersedeas bond. TEX. R. APP. P. 43.5; *see also id.* 60.5. Thus, if an appellee seeks judgment against the sureties on the supersedeas bond, the appellee's first brief may include that request in its prayer.

The appellate rules do not expressly address the appropriate disposition of the supersedeas bond when the appellant wins the appeal. The rules, however, do authorize the appellate court to enter "any other appropriate order that the law and the nature of the case require." TEX. R. APP. P. 43.6. Invoking that rule, the appellant may want to pray for the discharge of the sureties on the supersedeas bond. This prayer could come either in the appellant's brief or in a later motion after the court issues its opinion and judgment for the appellant.

M. General "Catch-All" Prayer

McDonald and Carlson advise that appellate practitioners conclude every prayer with a request for general relief. 6 McDonald & Carlson, *supra*, § 41:5. Typically, this catch-all request comes at the end of the prayer and asks the court to grant "any other relief to which [the party] is entitled" (or similar phrasing).

In some scenarios, including a general prayer for relief may preserve a request that otherwise would have been waived. For example, courts have occasionally held that a general prayer preserves the right to a remand for a new trial, in the event the party loses on its primary affirmance or rendition points. *Garza*, 2013 WL 5451592, at *10 n.9; *Ward v. Dallas Tex. Nat'l Title Co.*, 735 S.W.2d 919, 922 n.11 (Tex. App.—Dallas 1987, writ ref'd n.r.e.). Courts have also found general prayers to preserve other, discrete issues. *See, e.g.*, *Hannon, Inc. v. Scott*, No. 02–10–00012–CV, 2011 WL 1833106, at *10 (Tex. App.—Fort Worth May 12, 2011, pet. denied) (quoting *Green Tree Acceptance, Inc. v. Pierce*, 768 S.W.2d 416, 421 (Tex. App.—Tyler 1989, no writ) (general prayer, coupled with sufficient factual allegations, preserved request for a decree granting rescission); *Ralston Purina Co. v. McKendrick*, 850 S.W.2d 629, 638 (Tex. App.—San Antonio 1993, writ denied) (general prayer preserved claim for prejudgment interest). *But see supra* V.J (noting that a general prayer does not preserve a request for attorney's fees).

As a matter of best practices, a practitioner typically should not rely on a general prayer to preserve an important issue. As discussed above, any issue of substance should be addressed in the argument section of the brief. The general prayer should be viewed as the final element of a "belt and suspenders" approach to appellate practice, not as a standalone means of requesting relief.

Further, although it is generally a good idea to include a general prayer for relief, the appellate practitioner should always consider whether a general prayer is consistent with the client's goals for the appeal. In some situations—albeit perhaps rare ones—requesting general relief may actually contravene other parts of the prayer. Consider *Port of Houston Authority of Harris County v. Zachry Construction Corp.*, 377 S.W.3d 841 (Tex. App.—Houston [14th Dist.] 2012, pet. filed). In that case, the appellee/cross-appellant, Zachry, made two alternative prayers for relief, each "conditionally seek[ing] a new trial" on specific issues. Appellee's Br. 97–98, *Port of Hou. Auth. of Harris Cnty. v. Zachry Constr. Corp.* (Tex. App.—Houston [14th Dist.], filed July 18, 2011). Zachry made these new trial requests "conditional" because it wanted a new trial on those issues *only* in the event that the court was already going to grant a new trial to the appellant, the Port of Houston, on other issues. *Id.* Otherwise, Zachry did not want a new trial at all. *See id.* In this situation, it arguably would have been contradictory if Zachry's prayer for relief had also included a general "catch-all" request for relief. By making its request for new trial conditional, Zachry was effectively telling the court that it did *not* want "any other relief" unless those specific conditions were met.

VI. Fixing a Deficient Prayer

Even the most careful appellate practitioner makes mistakes from time to time. When the mistake affects the prayer for relief, the practitioner may seek leave to amend the prayer to correct the problem.

At least two Texas courts have held that the prayer can be amended after the brief has been filed. *Lopez-Juarez v. Kelly*, 348 S.W.3d 10, 14–15 (Tex. App.—Texarkana 2011, pet. denied); *Majeed*, 2010 WL 4137472, at *7–9. In *Lopez-Juarez*, the appellant's opening brief requested only rendition of judgment, even though her two issues both called for a remand, not rendition. 348 S.W.3d at 14. The appellee argued that this mistake in the prayer precluded the court from granting any relief. *Id.* When the appellant moved for leave to amend the prayer to include a

request for remand, the appellee opposed that motion and cited several cases standing for the propositions that (1) a court should not grant relief that the party has not requested, and (2) a party cannot raise new issues after filing the opening brief (in particular, cases holding that new issues cannot be raised in a reply brief). *Id.* at 14–15 & n.4 (citing, among others, *Horrocks*, 852 S.W.2d at 499; *Stevens*, 11 S.W.3d at 186; *Anchia v. DaimlerChrysler AG*, 230 S.W.3d 493, 500 n.1 (Tex. App.—Dallas 2007, pet. denied)).

The *Lopez-Juarez* court, however, rejected these arguments and allowed the appellant to amend her prayer. 348 S.W.3d at 14–15. The court reasoned that the appellate rules allow briefs to be amended, *see* TEX. R. APP. P. 38.7, 38.9, and that the briefing requirements must be construed "liberally" under Rule 38.9. *Lopez-Juarez*, 348 S.W.3d at 15. The court distinguished the precedents offered by appellee, explaining that raising a new substantive issue is not the same thing as offering a new or amended prayer to reflect an issue that has already been raised. *Id.*; *see also supra* IV.A (discussing this distinction).

The Austin court of appeals held similarly in *Majeed*. As discussed above, the appellant in that case requested only rendition of judgment in his prayer, even though he had raised both legal and factual sufficiency points in his argument. *Majeed*, 2010 WL 4137472, at *7–8. The appellant requested leave to amend the prayer, but the appellee opposed the request. *Id.* The court not only allowed the appellant to amend the prayer, but also held that omission of an explicit prayer for remand "does not waive [a party]'s entitlement to such relief or limit [the court's] power to award it under rule 43.3." *Id.* at *9. In the court's view, a prayer that omits an otherwise preserved request for remand is the type of defect that a party "should be permitted to cure" under Rules 38.7 and 38.9. *Id.* at *8 (citing *Kaspar*, 755 S.W.2d at 156–58).

VII. Conclusion

Although the prayer for relief does not appear until the very end of an appellate brief, it plays a crucial role in the appellate process. While the argument tells the court *why* the party wants the court to rule in its favor, the prayer succinctly tells the court *what* ruling the party wants. Properly constructed, the prayer provides a precise roadmap for the all-important endgame of every appeal: the judgment.

Instead of viewing the prayer as a mere procedural formality, appellate practitioners should treat the prayer as a prime opportunity—*the* prime opportunity—to tell the appellate court exactly what relief the client seeks. If an appellate judge can turn to a party's prayer and immediately discern exactly what that party wants the court to do, the party is in a far better position than if the court is forced to comb through fifty-plus pages of briefing to discern the same information. By writing the prayer with this goal from the outset, practitioners can ensure that those crucial final words of their brief do not go to waste.