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The Texas Rules of Appellate Procedure: Current Issues

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THE TEXAS RULES OF APPELLATE PROCEDURE: CURRENT ISSUES

TEXAS HIGH COURT RULEMAKING AND THE CCA RULES ADVISORY COMMITTEE

In 1985, the Texas Constitution was amended to add a provision granting rulemaking authority to the Supreme Court of Texas (SCOT). TEX. CONST. Art. V, § 31(a) provides that the SCOT “is responsible for the efficient administration of the judicial branch and shall promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts” (emphasis added). Further, TEX. GOV’T CODE § 74.024 authorizes the SCOT to “adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice.” *See also* TEX. GOV. CODE § 22.003 (“The supreme court may make and enforce all necessary rules of practice and procedure, not inconsistent with the law.”)

TEX. CONST. Art. V, § 5, governing the jurisdiction of the Court of Criminal Appeals (CCA), does not grant such broad rulemaking authority. However, the SCOT is required to request the advice of the CCA “before adopting rules affecting the administration of criminal justice.” TEX. GOV’T CODE § 74.024. Moreover, TEX. CONST. Art. V, § 31 provides that the Legislature may delegate to the SCOT or the CCA the power “to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law.” The Legislature has delegated specific rulemaking authority to the CCA in three areas:

- (1) rules of post-trial and appellate procedure applicable to criminal cases;
- (2) rules of evidence in criminal cases; and
- (3) electronic filing rules for capital cases in the CCA.

See TEX. GOV’T CODE §§ 22.108, 22.109, 22.1095; *see also* TEX. CODE CRIM. PROC. Ann. art. 44.33(a) (“The Court of Criminal Appeals shall make rules of posttrial and appellate procedure as to the hearing of criminal actions not inconsistent with the Code”); TEX. CODE CRIM. PROC. Ann. art. 44.45(c) (“The Court of Criminal Appeals may promulgate rules pursuant to this article.”).

The CCA’s rules of evidence, post-trial, and appellate procedure “may not abridge, enlarge, or modify the substantive rights of a litigant.” TEX. GOV’T CODE §§ 22.108(a), 22.109(a). Such rules and amendments thereto “remain in effect unless and until disapproved, modified, or changed by the legislature.” TEX. GOV’T CODE §§ 22.108(b), 22.109(b). The CCA is required to – and does – publish proposed new rules of appellate procedure and amendments to those rules in the Texas Register and the Texas Bar Journal. *See* TEX. GOV’T CODE §§ 22.108(c), 22.109(c). The CCA must also file new appellate rules and amendments to appellate rules with the Secretary of State. TEX. GOV’T CODE § 22.108(b). However, the CCA may order

that new appellate rules and amendments become effective at any time the Court “considers expedient in the interest of a proper administration of justice” and may adopt any “method it considers expedient for the printing and distribution of the rules.” TEX. GOV’T CODE § 22.108(b), (c).

As a matter of practice, the CCA usually coordinates its rulemaking actions with the SCOT. The two courts often act in tandem in reviewing suggested appellate rules changes and the two courts’ orders enacting the rules changes are sent simultaneously to the Texas Register and the Texas Bar Journal. The first time new appellate rules or rules amendments are published in the Texas Register and the Texas Bar Journal, a period of time is allotted for public comment on the changes. The Court receives and reviews the public comments and, following the public comment period, may – but is not required to – make changes to the published rules/rules amendments in response to the comments. The two courts then sign orders promulgating the final versions of the new rules/rules amendments and these orders and final rules/rules amendments are again published in the Texas Register and the Texas Bar Journal.

Both courts have rules advisory committees that assist their respective courts with the rulemaking process. The CCA’s Rules Advisory Committee is composed of various stakeholders, including CCA judges and staff members, and one or more intermediate appellate court judges, appellate court clerks, criminal defense attorneys, prosecutors, and trial judges. Currently, CCA Judge David Newell chairs the rules advisory committee. The committee receives suggestions and comments about the rules and potential changes to the rules from judges, court staff, practitioners, and other stakeholders. Committee meetings are open to the public and the dates and times of the meetings are posted on the CCA website (<http://www.txcourts.gov/cca/>). Advisory committee members discuss and evaluate suggestions and comments received about the rules in light of their training and experience. Though the committee does not have the authority to make final decisions concerning proposed rules changes, the committee has the option to recommend to the CCA that changes be made. The CCA then independently discusses the committee’s recommendations in conference and decides whether to order the changes recommended by the committee or take some other action.

Those wishing to submit comments or suggestions concerning appellate rules matters for consideration by the rules advisory committee can submit them to the CCA’s Clerk, Abel Acosta, at abel.acosta@txcourts.gov.

THE RULES OF APPELLATE PROCEDURE

In 1997, the Texas Supreme Court and the Court of Criminal Appeals signed orders amending and renumbering the Texas Rules of Appellate Procedure. The Courts made substantial changes to the rules in many areas. For example, the 1997 amendments: changed the way that litigants perfect appeals; redefined the designation of lead counsel; required a docketing statement; renamed the parts of the appellate record and changed the rules about filing, paying for, and supplementing the record; altered the requirements, headings, page limits, and deadlines

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