

PROCEDURE UPDATE:
A REVIEW OF RECENT DEVELOPMENTS
IN PROCEDURAL RULES THAT MAY IMPACT
YOUR APPELLATE PRACTICE

Kennon L. Wooten
Scott Douglass & McConnico LLP

1

A PRIMER ON RULEMAKING BY THE
SUPREME COURT OF TEXAS (SCOTX)

- ❖ It's a team effort driven by legislative mandates, perceived need, etc.
- ❖ See *How Texas Court Rules Are Made*, available on the SCOTX website under Rules & Forms (top menu)/Rules & Standards.
- ❖ All administrative orders are also available on the SCOTX website, under the Administrative Orders tab (in the top-left menu box on main page).
- ❖ Noteworthy rules orders are also sent by email to the SCOTX's listserv. Subscribe on the SCOTX website, if you haven't already done so.

2

AMENDED DIRECT APPEAL RULE (EFFECTIVE 1/1/2022)

- ❖ See Misc. Docket No. 21-9155 (Attachment A)
- ❖ Extensive amendments to TRAP 57 (think complete rewrite)
- ❖ Problem: Prior rule provided minimum guidance
- ❖ Fix: New rule provides extensive guidance
- ❖ Bottom Line: If you ever find yourself in the rare position of filing a direct appeal with the SCOTX, read and follow revised TRAP 57.

3

AMENDED ORAL ARGUMENT RULE (EFFECTIVE 2/1/2023)

- ❖ See Misc. Docket Nos. 23-9001; 22-9089 (Attachments B-1 and B-2)
- ❖ Amendments to TRAP 39.7
- ❖ The prior rule required a party to request oral argument on the front cover of its brief and provided that a failure to do so waived the right to argue.
- ❖ Issues arose...
- ❖ The amended rule makes it clear that, if a court of appeals sets a case for oral argument, *all* parties that filed a brief are entitled to participate.

4

AMENDED COUNSEL DISCLOSURE RULE (EFFECTIVE 8/1/2022)

- ❖ See Misc. Docket No. 22-9057 (Attachment C)
- ❖ Amendments to TRAP 38.1, 52.3, 53.2, and 55.2
- ❖ The prior rules required disclosure of “all counsel,” which was sometimes construed to refer only to counsel at the time of final judgment and appeal.
- ❖ Problem: With that degree of disclosure, justices sometimes did not identify the need for recusal or disqualification at the outset
- ❖ Fix: Requires information about “all counsel appearing in the trial or appellate courts” and imposes a duty to supplement disclosures

5

AMENDED EN BANC & REHEARING RULES (EFFECTIVE 10/1/2021)

- ❖ See Misc. Docket No. 21-9110 (Attachment D)
- ❖ Amendments to TRAP 10.1, 19.1, 41.2, 47.5, 49, 53.7
- ❖ Problem: Prior TRAP 49.5 caused confusion about the timing of filing a motion for en banc reconsideration
- ❖ Fix: New TRAP 49.5 clarifies that it should be filed at the same time as a motion for rehearing (i.e., 15 days after judgment/order)
- ❖ Other rule changes clarify terminology, rearrange content, and add standards and guidance about en banc consideration and rehearing

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Procedure Update: A Review of Recent Developments In Procedural Rules That May Impact Your Appellate Practice

Also available as part of the eCourse

[2023 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the 33rd Annual Conference on State and Federal Appeals session "Procedure Update"