

**PRESENTED AT**

2024 Robert O. Dawson Conference on Criminal Appeals

May 1, 2024,  
Capital, Austin Texas

**DRAFTING EFFECTIVE PDRs AND  
MOTIONS FOR REHEARING**

**CARMEN ROE**

CARMEN ROE LAW FIRM

Houston, Texas

713.236.7755

CARMEN@CARMENROE.COM

WWW.CARMENROE.COM

## ABOUT THE AUTHOR

Carmen Roe is a Texas criminal defense attorney specializing in trial, appeal and post-conviction in both State and Federal Courts. Carmen is Board Certified in Criminal Appeals by the Texas Board of Legal Specialization. She has been recognized as one of the top-rated lawyers in Texas and America. She also currently serves on the Board of Directors of the National Association of Criminal Defense Lawyers (NACDL).

Carmen has also served as a Director on a number of legal boards including the Texas Criminal Defense Lawyers Association (TCDLA), State Bar of Texas, and she is a past president of the Harris County Criminal Lawyers Association (HCCLA). Carmen was selected to be a Texas Bar Fellow in 2015. In 2019, she became a Senior Fellow with the American Leadership Forum. Carmen has served as an adjunct professor at the University of Houston Law Center. She is a frequently invited speaker on criminal defense strategies across the country.

Carmen has been selected by Best Lawyers in America (2021-24) and recognized by Texas Super Lawyers (2016-24) as well as a Texas Rising Star (2014-16). Her law firm was also named one of the Best Law Firms in America (2022-23).

Carmen is the legal analyst for KHOU (CBS) in Houston Texas and is a frequent legal analyst for national media including CourtTV.

## **I. Introduction**

This paper is in no way comprehensive and should not be relied upon for that purpose. Instead, I offer a focused look at petitions based on my experience, lessons learned and offer tips and tricks for both the beginner and advanced practitioner. This paper is also limited to my view as a criminal defense attorney and not from the perspective of a prosecutor. Finally, this introduction is intended to provide some overarching considerations, concerns, and pitfalls to guide the busiest practitioners in their effort to avoid deficient conduct and, with the right case, win for your client.

### **a. What it is and Why You Should Care**

A petition for discretionary review (PDR) is, just that, discretionary. This means the Court of Criminal Appeals is willing to review your case if it presents an issue that is worthy of the highest criminal court in Texas. Generally, this involves cases where there is a conflict between one or more courts of appeals on an issue of importance or where an issue that has never been considered by the highest Court, but should be, is presented. No surprise these two issues encompass two of the Texas Rules of Appellate Procedure (TRAP) Rule 66.3 reasons for review, which is the main source to follow in any PDR. In a bigger picture view, a PDR is primarily a review of the lower court of appeals judgment not necessarily on the merits but on the procedure and the law applied to the specific facts presented. For this reason, the issue(s) presented are the most important aspect of any PDR. This is true because it tells the Court, in no uncertain terms, that you have an issue or an area of law that should only be decided by the high Court within its limited discretion.

### **b. Appellate Counsel's Obligations to the Client**

Criminal defense attorneys should also consider a few additional matters not contained in TRAP 66.3. One consideration is the defendant's absolute right to file a PDR and your obligation as appellate counsel to either file a petition or properly advise your client to file a pro se petition. The Court requires counsel of record on appeal file a copy of a certified return receipt requested notice to the client advising of the right to file a pro se PDR. Additionally, the court requires that counsel file a letter of compliance along with a copy of the certified mail receipt with the court of appeals. The failure to file this notice can seem merely administrative, but it has far greater consequences, the result of which is a writ of habeas corpus alleging ineffective assistance of counsel. The failure to properly advise the client or failure to file the proper notice requirements can lead to a client filing a habeas application

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: Drafting Effective PDRs and Motions for Rehearing

Also available as part of the eCourse

[2024 Robert O. Dawson eConference on Criminal Appeals](#)

First appeared as part of the conference materials for the  
2024 Robert O. Dawson Conference on Criminal Appeals session  
"Drafting Effective PDRs and Motions for Rehearing"