

**How Texas Court Rules Are Made**  
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**I. Introduction**

The Supreme Court of Texas does not just decide cases. It also has vast administrative responsibilities that stem from its constitutional and statutory control of the judicial branch and its responsibility for the administration of justice.<sup>2</sup> The Chief Justice is responsible for ensuring that the Court “executes and implements [its] administrative duties and responsibilities.”<sup>3</sup>

Rulemaking is just one of the Court’s many administrative functions, but it is arguably the function that has the greatest impact on our courts and those who use them. This paper focuses on the procedure for making the rules that govern judges, lawyers, and litigation day-to-day, such as rules of procedure and evidence. But the Court makes many other sets of rules that most lawyers are unaware of—rules that govern the internal operation of judicial entities such as the Board of Disciplinary Appeals, rules that regulate court professionals such as interpreters and court reporters, and many more. The process for making those lesser known rules is similar to the process outlined here.

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Chief Justice Nathan L. Hecht has been the justice in charge of the Court’s rulemaking projects since 1989. Other justices are actively involved in rulemaking projects related to their liaison assignments,<sup>4</sup> and all justices participate in deciding whether to pursue a rules project and the content of the rules issued by the Court. Since 1993, the Court has also had a rules attorney who shepherds the Court’s rulemaking projects through the process described in this paper and who serves as a liaison between the Court, on the one hand, and the various groups involved in the rulemaking process, the bar, and the public, on the other.

Good court rules are crucial to the efficient administration of justice. For Texas to have the best rules possible, lawyers must know how the rules are made and how they can participate in the process. This paper starts at the beginning—the Court’s authority to make rules in the first place—and then outlines the Court’s procedure for making most court rules. The last section addresses rules resources that are available online and how the Court’s rules attorney can help you.

**II. The Supreme Court’s Authority to Promulgate Rules**

Today the Supreme Court has broad constitutional and statutory authority to promulgate procedural rules for civil actions and administrative rules for all Texas courts.

<sup>2</sup> See TEX. CONST. art. V, § 31(a) (“The Supreme Court is responsible for the efficient administration of the judicial branch . . .”); TEX. GOV’T CODE § 74.021 (“The supreme court has supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice.”).

<sup>3</sup> TEX. GOV’T CODE § 74.006.

<sup>4</sup> The justices’ liaison assignments are posted on the Court’s website under the “About the Court” tab: <http://www.txcourts.gov/supreme/about-the-court.aspx>.

It has not always been so. A concise but thorough explanation of the history of the Court's constitutional and statutory rulemaking power is available on the Court's website.<sup>5</sup>

The Court has also recognized its inherent authority to promulgate rules, which springs from the separation of powers mandated by the Texas Constitution.<sup>6</sup> But as demonstrated below, the Court's constitutional and statutory administration-of-justice authority is so broad that it encompasses virtually any kind of rule the Court could make.

### **1. Administration of Justice and the Judicial Branch**

Article V of the Texas Constitution makes the Court "responsible for the efficient administration of the judicial branch" and states that the Court "shall promulgate rules of administration . . . as may be necessary for the efficient and uniform administration of justice in various courts."<sup>7</sup> The only constitutional restriction on the Court's power to make rules of administration is that the rules must "not [be] inconsistent with the laws of the state."<sup>8</sup>

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<sup>5</sup> The history comes from a 1997 paper by Nathan L. Hecht & E. Lee Parsley titled *Procedural Reform: Whence and Whither*. An excerpt of the paper, which was updated by then-rules attorney Robert H. Pemberton in 1998, is posted on the Court's website. See *Texas Court Rules: History and Process*, <http://www.txcourts.gov/rules-forms/rules-standards/texas-court-rules-history-process.aspx>.

<sup>6</sup> See TEX. CONST. art. II, § 1 ("The powers of the Government of the State of Texas shall be divided into three distinct departments . . . [N]o person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."). *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398-99 & n.1 (Tex. 1979), contains a robust discussion of the Court's

Chapter 74 of the Government Code—the Court Administration Act—defines the administrative role of the Court. Section 74.024 authorizes the Court 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."<sup>9</sup> The only statutory restriction on the Court's power to make rules of administration is that the Court must "request the advice of the court of criminal appeals before adopting rules affecting the administration of criminal justice."<sup>10</sup>

The Court has used its administration-of-justice power to make rules governing varied aspects of the Texas judicial system. The most straightforward example is the body of rules titled Rules of Judicial Administration,<sup>11</sup> which addresses the administrative duties of regional presiding judges and local administrative judges, public access to judicial records, time standards for the disposition of cases, multidistrict litigation, and special three-judge district courts, among other topics. Another, more recent example is the 2015 approval of e-filing rules for criminal cases in the trial courts.<sup>12</sup>

inherent powers and gives examples of instances in which the Court has used these powers.

<sup>7</sup> TEX. CONST. art. V, § 31(a).

<sup>8</sup> *Id.*

<sup>9</sup> TEX. GOV'T CODE § 74.024(a); see also *id.* § 74.024(c) (enumerating potential subjects of Supreme Court rulemaking, such as time standards for the disposition of trial motions and for setting a trial date).

<sup>10</sup> *Id.* § 74.024(b).

<sup>11</sup> See TEX. R. JUD. ADMIN. 1 ("These rules are promulgated pursuant to Section 74.024 of the Texas Government Code.")

<sup>12</sup> See Misc. Docket No. 15-9205 (Oct. 1, 2015) (Final Approval of Rules Governing Electronic Filing in Criminal Cases). All administrative orders are available on the Court's website at

## 2. Practice and Procedure in Civil Actions

Article V of the constitution also directs the Court to “promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts.”<sup>13</sup> Likewise, Government Code section 22.004 authorizes the Court to “promulgate a specific rule or rules of civil procedure”<sup>14</sup> and states that the Court has “full rulemaking power” in civil practice and procedure.<sup>15</sup>

Section 22.004 gives the legislature the power to overturn Court-approved procedural rules.<sup>16</sup> It has never actually done so, but the legislature has proactively enacted statutes that prescribe procedural rules and expressly prohibit the Court from changing them.<sup>17</sup>

Yet section 22.004 also grants the Court the authority, through rulemaking, to “repeal[] all conflicting laws and parts of laws governing practice and procedure in civil actions,” so that the Court has “full rulemaking power in civil actions.”<sup>18</sup> The

statute requires that the Court announce its use of this power by filing with the secretary of state a list of each law that is repealed or modified.”<sup>19</sup> The “list has the same weight and effect as a decision of the court.”<sup>20</sup> The Court has exercised its power to repeal a statute sparingly.<sup>21</sup>

## 3. Rules Governing Lawyers and the State Bar

The State Bar Rules were initially adopted in 1983 “in aid of the Court’s inherent power to regulate the practice of law.”<sup>22</sup> In 1987, the legislature passed the State Bar Act.<sup>23</sup> Government Code section 81.024 authorizes the Court to “adopt rules . . . for the operation, maintenance, and conduct of the state bar and the discipline of its members”<sup>24</sup> but further requires that rules adopted “under this section” be first approved in a referendum of State Bar members.<sup>25</sup> Historically, the Court and State Bar have conducted referenda when the proposed amendments would make substantive changes to the Rules of Professional Conduct or the Rules of

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<http://www.txcourts.gov/supreme/administrative-orders.aspx>.

<sup>13</sup> TEX. CONST. art. V, § 31(b).

<sup>14</sup> TEX. GOV’T CODE § 22.004(b).

<sup>15</sup> *Id.* § 22.004(a), (c).

<sup>16</sup> *See id.* § 22.004(b) (“The rules and amendments to rules remain in effect unless and until disapproved by the legislature.”).

<sup>17</sup> *See, e.g.*, TEX. CIV. PRAC. & REM. CODE §§ 10.001-10.005 (procedural rules for sanctions for the filing of a frivolous pleading or motion); *id.* § 10.006 (“Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.”). Other statutory examples are listed in *Texas Court Rules: History and Process*, *supra* note 5.

<sup>18</sup> TEX. GOV’T CODE § 22.004(c).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> The Court exercised its section 22.004(c) power twice in 1998. *See* Misc. Docket No. 98-9043 (Feb. 25, 1998) (Final Approval of Revisions to the Texas Rules of Evidence) (repealing TEX. HEALTH & SAFETY CODE § 611.006(a)(6) insofar as it conflicts with Texas Rule of Evidence 510); Misc. Docket No. 98-9196 (Nov. 9, 1998) (Final Approval of Revisions to the Texas Rules of Civil Procedure) (repealing TEX. BUS. & COMM. CODE § 17.57 insofar as it conflicts with Texas Rule of Civil Procedure 176.3(a)). The Court has not exercised its section 22.004(c) power since then.

<sup>22</sup> TEX. STATE BAR R. pmbl.

<sup>23</sup> Acts 1987, 70th Leg., R.S., ch. 148, § 3.01, 1987 Tex. Gen. Laws 593 (codified in TEX. GOV’T CODE ch. 81-82).

<sup>24</sup> TEX. GOV’T CODE § 81.024(b).

<sup>25</sup> *See id.* § 81.024(c)-(g).

Disciplinary Procedure.<sup>26</sup> The Court has frequently used its inherent power to regulate the practice of law and its constitutional and statutory administration-of-justice rulemaking authority to amend, without a referendum, provisions of the State Bar rules relating to Bar administration.<sup>27</sup>

Chapter 82 of the Government Code governs the licensing of attorneys. It states that only the Court “may issue licenses to practice law in this state”<sup>28</sup> and authorizes the Court to “adopt rules on eligibility for examination for a license to practice law and on the manner in which the examination is conducted,”<sup>29</sup> as well as other rules “necessary to administer its functions.”<sup>30</sup>

#### 4. Miscellaneous Rules Directed by the Legislature

Finally, the legislature has often directed the Court, through legislation, to make certain kinds of rules. The subject matter of legislatively directed rules can vary greatly. Some examples include:

- the dismissal of baseless causes of action (TRCP 91a);<sup>31</sup>

- expedited actions (TRCP 169);<sup>32</sup>
- special three-judge district courts (Rule of Judicial Administration 14);<sup>33</sup>
- proceedings under Chapter 33 of the Family Code to obtain a judicial bypass of the statutory requirement of parental notice and consent to a minor’s abortion;<sup>34</sup> and
- the certification, registration, licensing, and conduct of court reporters, interpreters, guardians, and process servers.<sup>35</sup>

### III. Comparison: Court of Criminal Appeals’ Rulemaking Authority

In contrast to the broad authority expressly granted to the Supreme Court, the Court of Criminal Appeals’ constitutional and statutory rulemaking authority is limited. The only constitutional reference to the Court of Criminal Appeals’ rulemaking authority is Article V, Section 31’s statement that the “legislature may delegate to the Supreme Court or Court of Criminal Appeals the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as

that have no basis in law or fact on motion and without evidence.”).

<sup>32</sup> See *id.* § 22.004(h) (“The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions.”).

<sup>33</sup> See *id.* § 22A.004(b) (“The supreme court may adopt rules for the operation of a special three-judge district court convened under this chapter and for the procedures of the court.”).

<sup>34</sup> See TEX. FAM. CODE § 33.003(l) (“The supreme court may adopt rules to permit confidential docketing of an application under this section.”); § 33.003(m) (“The clerk of the supreme court shall prescribe the application form to be used by the minor filing an application under this section.”).

<sup>35</sup> See TEX. GOV’T CODE § 152.101 (“The supreme court may adopt rules consistent with this subtitle, including rules governing the certification, registration, licensing, and conduct of persons regulated under this subtitle.”).

<sup>26</sup> Since 1993, the Court and the State Bar have conducted five referenda to amend the Rules of Professional Conduct or the Rules of Disciplinary Procedure. Only two of those referenda passed. See Sunset Advisory Commission Staff Report on the State Bar of Texas for the 85th Legislature 15 (2016-2017), <https://www.sunset.texas.gov/reviews-and-reports/agencies/state-bar-texas> (last visited May 11, 2016).

<sup>27</sup> See, e.g., Misc. Docket No. 15-9154 (Aug. 28, 2015) (Final Approval of Amendments to Article XII of the State Bar Rules) (removing the MCLE exemption for emeritus members of the bar).

<sup>28</sup> TEX. GOV’T CODE § 82.021.

<sup>29</sup> *Id.* § 82.022(a).

<sup>30</sup> *Id.* § 82.022(b).

<sup>31</sup> See *id.* § 22.004(g) (“The supreme court shall adopt rules to provide for the dismissal of causes of action

may be provided by law.”<sup>36</sup> The legislature has only delegated to the Court of Criminal Appeals the power to promulgate three specific categories of litigation rules: (1) “rules of posttrial, appellate, and review procedure in criminal cases”;<sup>37</sup> (2) “rules of evidence in the trials of criminal cases”;<sup>38</sup> and (3) “rules and procedures providing for and governing the electronic filing of briefs, pleadings, and other documents for capital cases in that court.”<sup>39</sup>

It is unclear whether the Court of Criminal Appeals has the inherent authority to independently make other types of rules governing criminal cases—such as rules of criminal procedure in the trial courts<sup>40</sup>—or whether that authority has been delegated to the Supreme Court through the provisions in the constitution and the Government Code granting the Supreme Court the authority to make rules for the administration of justice in criminal cases.<sup>41</sup> As a practical matter, the issue would only be raised if the Court of Criminal Appeals promulgated rules for criminal cases that were not jointly approved by the Supreme Court. But the two high courts strive to reach an agreement on criminal rules in order to avoid that scenario. For example, in 2015, the Supreme Court and the Court of Criminal Appeals jointly approved rules governing electronic filing in criminal trial court cases.<sup>42</sup>

#### IV. The Supreme Court’s Rulemaking Process

Except for statutory provisions that require a public-comment period for rules of procedure and administration, there are no rules for making the rules. The process is organic, flexible, and differs somewhat from project to project. But there is a general path that most rules projects follow: (1) initiation by the Court; (2) drafting work and study by the Supreme Court Advisory Committee or another outside group; (3) if another group performs the initial drafting work, review by the Supreme Court Advisory Committee; (4) additional study and redrafting by the Court’s rules attorney and her supervising justice; (5) the Court’s deliberation on the proposed rules in one or more administrative conferences, culminating in an order giving preliminary approval to the rules and inviting public comment; (6) a public-comment period; and (7) a second order approving the final version of the rules. This process is fleshed out more below.

##### 1. Project Initiation

The first step in the rulemaking process is the Court’s decision to take on a rules project. Today, many rules projects are initiated by legislation that directs or authorizes the Court to make certain kinds of rules.<sup>43</sup> Other projects are initiated by comments and feedback from members of the bar or the

procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern.”).

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<sup>36</sup> TEX. CONST. art. V, § 31(c).

<sup>37</sup> TEX. GOV’T CODE § 22.108.

<sup>38</sup> *Id.* § 22.109.

<sup>39</sup> *Id.* § 22.1095(a). Subsection (b) requires the Court of Criminal Appeals to “coordinate” its adoption of rules under (a) “with the supreme court and the rules and procedures adopted by that court.” *Id.* § 22.1095(b).

<sup>40</sup> Criminal trials are governed by the Code of Criminal Procedure and the common law. *See* TEX. CODE CRIM. PRO. art. 1.27 (“If this Code fails to provide a rule of

<sup>41</sup> *See* TEX. CONST. art. V, § 31(a); TEX. GOV’T CODE § 74.024(a)-(b).

<sup>42</sup> *See* Misc. Docket No. 15-9205 (Oct. 1, 2015) (Final Approval of Rules Governing Electronic Filing in Criminal Cases).

<sup>43</sup> *See supra* Part II(4).

public or by the proposal of a bar committee dedicated to studying the rules or a group with special expertise on a particular subject. Anyone can propose new rules or amendments to existing rules. Sometimes the Court decides on its own that a rules change is needed.

## **2. Intensive Study and Drafting Work**

Making and amending all of the rules that govern the Texas judicial system is a big job, and the Court needs a lot of outside help. The nitty-gritty, tedious study and drafting work is usually performed by a group outside the Court, at least initially. There are several groups that could potentially fill this role, but here are the major players.

### **a. The Supreme Court Advisory Committee (SCAC)**

The Supreme Court Advisory Committee is a standing committee of practitioners, judges, and academics who are appointed by the Court to study, draft, and make recommendations on rules, as the Court directs. The Committee was first appointed in 1939, after passage of the Rules of Practice Act,<sup>44</sup> to draft the Texas Rules of Civil Procedure. It has been in existence ever since. The number of members has changed over the years. Today it is about 50. The Court appoints members for three-year terms and strives to achieve all kinds of diversity—geographic, demographic, and of experience.

For most of its history, the SCAC considered every rules proposal it received from any source whatsoever, but that is no longer the case. Today, the SCAC only works

on projects at the Court's request. The Court might ask the SCAC to draft rules or amendments itself or to review and comment on rules or amendments drafted by another group.

Importantly, the SCAC is *advisory only*. Its work product and opinions are not binding on the Court. The SCAC often votes on drafts, proposals, or issues to get a sense for the majority view and when the SCAC's debate on a topic has run its course. But the Court always has the final say, and it often disagrees with the SCAC's recommendations.

SCAC meetings are open to the public and transcribed by a court reporter. Meeting transcripts and materials are posted to the Court's website.<sup>45</sup> In addition, the Jackson Walker law firm also maintains a site with information about the SCAC.<sup>46</sup>

### **b. Bar Association Groups**

There are also several bar association groups that study and recommend changes to the rules. In contrast to the SCAC, these committees act independently of the Court and function more like grassroots generators of rules proposals. This category includes three State Bar of Texas committees: (1) the Court Rules Committee, which focuses on the rules of civil and appellate procedure; (2) the Administration of Rules of Evidence Committee; and (3) the Texas Disciplinary Rules of Professional Conduct Committee. The trial and appellate sections of the State Bar are also active in reviewing and recommending changes to the rules.

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<sup>44</sup> Act of May 15, 1939, H.B. 108, 46th Leg., R.S., ch. 25, 1939 Tex. Gen. Laws 201 (formerly codified as TEX. REV. CIV. STAT. ANN. art. 1731a, now codified as TEX. GOV'T CODE § 22.004).

<sup>45</sup> <http://www.txcourts.gov/scac.aspx>.

<sup>46</sup> <http://jwclientservices.jw.com/sites/scac/default.aspx> (last visited May 12, 2016).

### **c. Specialized Task Forces**

Occasionally a rules project requires an expertise that the SCAC lacks. In those cases, the Court often appoints a task force of specialists to do the initial study and drafting work for a particular project. Examples include the Task Force on Judicial Foreclosure Rules, which has been convened several times to draft and revise Texas Rules of Civil Procedure 735 and 736,<sup>47</sup> and the Task Force on International Law Practice in Texas, which was established to recommend updates to the bar-admission requirements for foreign-trained lawyers.<sup>48</sup>

### **3. Review By the SCAC**

If the initial drafting work is performed by a group other than the SCAC, the Court often asks the SCAC to review and comment on the drafting group's work product—particularly if the project relates to rules of procedure or evidence. Sometimes the SCAC will disagree with the direction taken by the initial drafters and submit its own draft to the Court. Some projects go through SCAC review multiple times.

### **4. Internal Work at the Court**

Once all outside drafts have been submitted to the Court and the SCAC's review is complete, the real work inside the Court begins. The rules attorney and her supervising justice sort through all of the drafts, re-read the transcripts of all applicable SCAC discussions, and decide on recommendations and a draft to present to the full Court. This internal work can take anywhere from a few weeks to a few years or

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<sup>47</sup> See Misc. Docket No. 99-9233 (Dec. 1, 1999) (Appointment of Members to Reverse Mortgage Foreclosure Rules Task Force); Misc. Docket No. 07-9160 (Sept. 20, 2007) (Order Creating Task Force on Judicial Foreclosure Rules).

more, depending on the complexity and urgency of the project, the Court's priorities, and whether intervening legislation requires the Court to shift its focus to other projects. The work performed in this stage can range from light-touch editing of an outside draft to a complete, start-from-scratch rewrite.

### **5. Administrative Conference No. 1 & Preliminary Approval Order**

Eventually, the rules attorney and her supervising justice will present their work product and recommendations to the full Court in conference, along with the work product and recommendations of all outside groups that worked on the project. The Court often goes through the drafts line-by-line. Conference deliberations can take hours and often result in changes to the draft proposed by the rules attorney. When a majority of the Court reaches an agreement, the Court will issue an administrative order giving preliminary approval to the rule. Some rules projects are conferenced multiple times before an initial approval order is released.

### **6. Public-Comment Period**

When the Court adopts a new statewide rule or makes substantive amendments to an existing statewide rule, it almost always invites public comment. The Government Code imposes a statutory comment period for rules of procedure and judicial administration. Section 22.004(b) requires the clerk of the Supreme Court to "mail a copy of those rules or amendments to rules [of civil procedure] to each registered member of the State Bar of Texas not later than the 60th day before the date on which

<sup>48</sup> See Misc. Docket No. 09-9141 (Aug. 24, 2009) (Order Establishing the Task Force on International Law Practice in Texas).

they become effective.”<sup>49</sup> Section 74.024(d) contains an analogous provision requiring that rules of judicial administration be mailed to members 120 days before their effective date.<sup>50</sup> The Court has construed these sections as requiring a 60-day comment period for rules of procedure and a 120-day comment period for rules of administration, which officially commences when the new or amended rule is published in the *Texas Bar Journal*.<sup>51</sup> Publication of a rules order in the *Texas Bar Journal* is the Court’s method of mailing the order to all bar members.

The legislature has not required a comment period for other kinds of rules, but the Court often has one anyway, especially when the Court makes substantive changes to rules of statewide interest, such as the Rules of Evidence or the Rules Governing Admission to the Bar. Instructions for submitting comments and their due date are stated in the preliminary approval order.

Usually—and ideally—the comment period concludes *before* the effective date of the amendments so that only one version of the amendments takes effect. For example, the Court may approve amendments to the Rules of Civil Procedure in a preliminary order dated May 1, to be effective September 1. The comment period will be deemed to commence on June 1 with the order’s publication in the June edition of the *Texas*

*Bar Journal*, and then run through the end of July, satisfying the 60-day requirement of section 22.004(b). But occasionally the Court must make the rules effective first and have the comment period second in order to meet a deadline imposed by the legislature or because some other circumstance counsels in favor of making the rules effective right away.<sup>52</sup>

Notably, the public always has longer than the length of the official comment period to submit comments on a rules change. The order is often released to the public through the Court’s website several weeks before it is published in the *Texas Bar Journal*, and the Court reviews and considers all comments submitted after the due date stated in the Court’s preliminary approval order.

## **7. Administrative Conference No. 2 & Final Approval Order**

After the deadline for submitting comments has passed, the rules attorney and her supervising justice present the comments to the Court and recommend whether to make any changes to the rules in response. If the rule has not yet taken effect, the Court will issue a final approval order before the effective date that contains the final version of the rule—even if the final version is the same as the version set forth in the preliminary approval order. The final

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<sup>49</sup> TEX. GOV’T CODE § 22.004(b).

<sup>50</sup> *See id.* § 74.024(d).

<sup>51</sup> Unlike section 22.004(b), which requires that rules be mailed to members 60 days before their effective date but does not expressly require the Court to invite comments, section 74.024(d) states that the Court must mail amendments to rules of judicial administration 120 days before their effective date and have a 60-day comment period. But there is usually no reason to cut off the comment period two months before the rule takes effect, so rules promulgated under the authority of section 74.024 usually have a 120-day comment period.

<sup>52</sup> Two recent examples of this departure from the usual order are the December 29, 2015 order approving amendments to the Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code (Misc. Docket No. 15-9246) and the March 22, 2016 order adopting Rule of Judicial Administration 14 to govern special, three-judge district courts (Misc. Docket No. 16-9037). In each instance, the new rule or amendments had to take effect immediately because they related to statutory changes that were about to take effect or had already taken effect.

approval order will also be published in the *Texas Bar Journal*. If the rule is already effective, the Court may not issue a second order unless it makes changes to the rule in response to the comments received.

## V. Resources, Rules History Research, Tips, and Contact Information

The Court’s rulemaking process is different from its case-adjudication process in one important respect: public participation and access. You cannot call a chambers staff attorney to discuss a case that is pending or may come before the Court, but you can call the rules attorney to propose a rules amendment or to discuss a rules project that the Court has decided to pursue. The Court strives to make the substance and procedure of its rulemaking as transparent as possible and has tasked its rules attorney with serving as an ambassador to the bar and the public on all rules-related issues. To that end, here is a list of online rules-related resources, an explanation of how the rules attorney can help you research a rule, and some practice tips.

### 1. Online Rules Resources

#### a. Resources Available on the Court’s Website

There are many rules resources available to the public through the Court’s website: [www.txcourts.gov/supreme](http://www.txcourts.gov/supreme).

- *Administrative orders.* The “Administrative Orders” link on the left-hand side of the page contains every administrative order that the Court has issued since 1990, organized by year.

- *The “official” version of rules.* A complete, “official” version of most statewide rules is available on the website under “Rules & Forms/Rules & Standards” at the top of the page. The rules are updated by Court personnel as soon as a rule amendment takes effect, so they should always be accurate and up to date.
- *SCAC materials.* Agendas, materials, and transcripts for meetings dating back to 1982 are available under the “Organizations” tab at the top of the page.

#### b. South Texas Historical TRCP Database

South Texas College of Law maintains an online database of historical versions of the Rules of Civil Procedure.<sup>53</sup> By clicking on a particular rule, the user can see every prior version of that rule since the rule’s initial adoption.

### 2. Rules History Research

If you cannot find a rules-related document online, call the rules attorney. The rules attorney can also help you research the history of a rule by providing administrative orders, SCAC materials, and other nonconfidential records relating to the rule.

### 3. Tips

- Commercially published rules books are extremely helpful—the justices and Court staff use them daily—but the Court has no control over what is published in them. When the exact language of a particular rule is important, consult the rules posted on the Court’s website.

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<sup>53</sup> <https://www.stcl.edu/library/TexasRulesProject/MainIndex.htm> (last visited May 12, 2016).

- Be careful when relying on preliminary approval orders. If the order’s cover page invites public comment on a rules change and makes the change effective after the comment period has ended, the version of the rule in the order is *not the final version*. Preliminary approval orders always contain this warning: “These amendments may be changed in response to comments received by \_\_\_\_\_ [date].”
- “Public comments” are not just comments *by the public*, they are also open to the public under Rule of Judicial Administration 12. Any person can obtain the public comments on a rules proposal after the public-comment period has ended by contacting the rules attorney.

#### **4. Contact Information**

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## NATHAN L. HECHT

Nathan L. Hecht is the 27th Chief Justice of the Supreme Court of Texas. He has been elected to the Court six times, first in 1988 as a Justice, and most recently in 2014 as Chief Justice. He is the longest-serving Member of the Court in Texas history and the senior Texas appellate judge in active service. Throughout his service on the Court, Chief Justice Hecht has overseen revisions to the rules of administration, practice, and procedure in Texas courts, and was appointed by the Chief Justice of the United States to the federal Advisory Committee on Civil Rules. Chief Justice Hecht is also active in the Court's efforts to assure that Texans living below the poverty level, as well as others with limited means, have access to basic civil legal services.

Chief Justice Hecht was appointed to the district court in 1981 and was elected to the court of appeals in 1986. Before taking the bench, he was a partner in the Locke firm in Dallas. Chief Justice Hecht holds a B.A. degree with honors in philosophy from Yale University, and a J.D. degree *cum laude* from the SMU School of Law, where he was a Hatton W. Sumners Scholar. He clerked for Judge Roger Robb on the U.S. Court of Appeals for the District of Columbia Circuit and was a Lieutenant in the U.S. Navy Reserve Judge Advocate General Corps. Chief Justice Hecht is a Life Member of the American Law Institute and a member of the Texas Philosophical Society.

His term ends December 31, 2020.

**Martha G. Newton**  
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Martha Newton is the Rules Attorney at the Supreme Court of Texas.

Martha received her undergraduate degree in French from the University of Texas in 2001 and her J.D. with honors from the University of Texas School of Law in 2004. During law school, Martha served as a Notes Editor on the Texas Law Review.

Following graduation, Martha clerked for the Hon. Edward C. Prado, U.S. Court of Appeals for the Fifth Circuit. Martha then worked in the appellate practice group of Baker Botts, L.L.P. in the Houston and Austin offices for over five years. While in private practice, Martha was named as a Texas Rising Star from 2008-2011.

Martha joined the staff of the Supreme Court as the Mandamus Attorney in 2011. She became the Court's eighth Rules Attorney in September 2013. As Rules Attorney, Martha serves as a liaison between the Court and the bar on all matters involving local or statewide rules.

## **KENNON L. WOOTEN**

*Partner | Scott, Douglass & McConnico LLP | Austin, Texas*

Kennon joined Scott, Douglass & McConnico LLP in 2011, after serving as the Rules Attorney for the Supreme Court of Texas, working as an associate for Baker Botts LLP (in Austin), and clerking for former Chief Justice Wallace B. Jefferson of the Supreme Court of Texas. As Rules Attorney, she handled inquiries and issues relating to local and statewide rules and assisted the Court with promulgating and amending rules. At Scott, Douglass & McConnico, her docket includes a broad range of civil litigation and appeals involving, among other things, allegations of breach of fiduciary duty, breach of contract, business tort, personal injury, and professional malpractice. She represents Fortune 500 corporations, law firms, lawyers, judges, family-owned businesses, associations, and individuals. Her education includes the University of Texas at Austin (BA with highest honors, 1999) and the University of Texas School of Law (JD with honors, 2004). In her third year of law school, she served as the Head Teaching Quizmaster. Kennon is actively involved with the bar. She served as the President of the Austin Young Lawyers Association in 2012-2013 and currently serves as Vice Chair of the State Bar Committee on Court Rules and as a member of the Austin Bar Association Board of Directors, Editorial Board for *The Advocate* (a quarterly publication of the State Bar), and Board of Directors for the Texas Legal Services Center. She is also serving as Editor-in-Chief for *Austin Lawyer*, a monthly publication of the Austin Bar. In 2011, she received a Special Commendation of the Supreme Court of Texas and State Bar for her work relating to the disciplinary rules in Texas. She is a frequent CLE speaker and has been named as a Texas Rising Star in 2008, 2009, and 2013-2016.