

Suggested Agenda Items for Next Texas Court of Criminal Appeals Rules Advisory Committee Meeting

1. Filling vacant positions on this committee. Discussion; nominations.
2. Update on the Committee on the Administration of Rules of Evidence of the State Bar of Texas's review and proposed changes to Texas Rules of Evidence 203, 403, 408, 509, 510, 701-705, and 804.
3. Proposed TRAP amendments:
 - (a) Proposed amendments to TRAP 72 and 9.4 (new rule for original proceedings in extraordinary matters in the Court of Criminal Appeals) (see Ex. A)
 - (b) Proposed new TRAP 73.7 (*Peña* motion rule) (see Ex. B)
4. Additional discussion of proposed rules of criminal procedure.
 - (a) Update on meeting with representatives of Texas Judicial Council (TJC)
 - (b) Memo on areas where additional rules of criminal procedure are needed (see Ex. C)
 - (c) Proposed Tex. R. Crim. P. 1, 2 (Title I) (see Ex. D)
 - (d) Proposed Tex. R. Crim. P. 6.5 and 6.6 (Recusal and Disqualification of Judges) (see Ex. E)
 - (e) Proposed Tex. R. Crim. P. 9.3 (Withdrawal and Substitution of Counsel) (see Ex. F)
5. Electronic Filing Rules Update.
 - (a) Order issued by Court of Criminal Appeals this summer RE Electronic Filing – Mandatory implementation in phases. Order not currently posted to OCA website. Only version of E-Filing Rules on website is from 10/1/2015. (see Ex. G)
 - (b) E-Filing concerns raised at public hearing on April 5, 2016.
 - i. Trial exhibits are being destroyed due to confusion about the meaning of E-Filing rules.
 - ii. Rules do not address some counties' use of existing electronic (legacy) systems, such as Harris County's vouchers system.
 - iii. The rules do not address *pro se* litigants or the independent written submissions of inmates who are represented by counsel.
 - iv. The rules do not make clear whether police officers filing search warrant affidavits will be forced to E-File them.
 - v. The rules do not currently address whether and/or under what circumstances the rules apply to municipal and justice courts and should

- clarify what standards they must follow if they implement E-Filing.
- vi. Cybersecurity and Sensitive data. Several commentators expressed concern that there was confusion over what can and cannot be posted on the Internet. The eFiling rules provide: “Rule 5.6... Documents that contain sensitive data in violation of these rules must not be posted on the internet.” However, Rule 5.1 defining “Sensitive Data” does not reference any other statutes governing confidentiality and only expressly includes three types of confidential information. Many types of sensitive data are not addressed in the sensitive data rule, such as the names of jurors, rape victims, & confidential informants, medical histories, educational records, military records, psychiatric records, and criminal histories.
 - vii. Should plea paperwork be expressly exempted from E-Filing requirements?
 - viii. Rule 1.3 still needs to be corrected to omit charging instruments from the list.