

# IN THE SUPREME COURT OF TEXAS

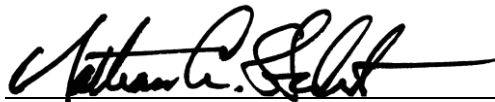
Misc. Docket No. 18-9151

## ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 73.1 AND 73.4

**ORDERED** that:

1. By orders dated April 9, 2018 and September 10, 2018, in Misc. Docket Nos. 18-006 and 18-017, the Court of Criminal Appeals proposed amendments to Texas Rules of Appellate Procedure 73.1 and 73.4 and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

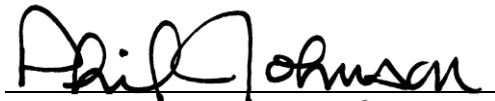
Dated: November 5, 2018.



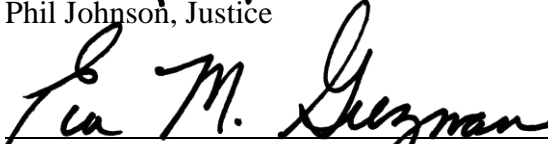
Nathan L. Hecht, Chief Justice



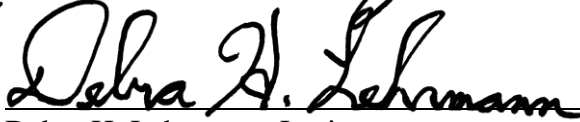
Paul W. Green, Justice



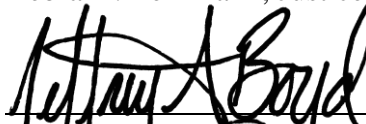
Phil Johnson, Justice



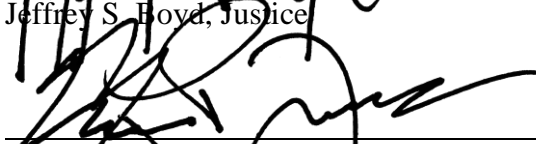
Eva M. Guzman, Justice



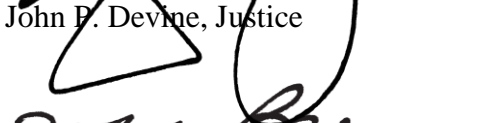
Debra H. Lehrmann, Justice



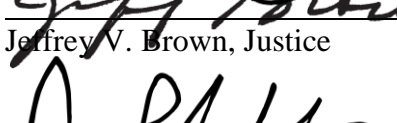
Jeffrey S. Boyd, Justice



John F. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock, Justice

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

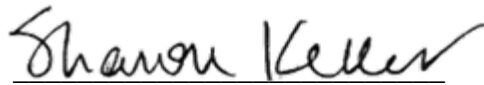
Misc. Docket No. 18-022

## ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 73.1 AND 73.4

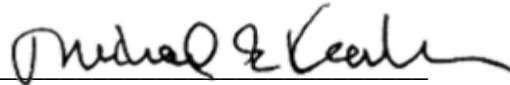
**ORDERED** that:

1. On April 9 and September 10, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Orders 18-006 and 18-017 proposing amendments to Rules of Appellate Procedure 73.1 and 73.4 and invited public comments. The public comment periods have expired.
2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.
3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 73.1 and 73.4. The amendments will take effect on December 1, 2018.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

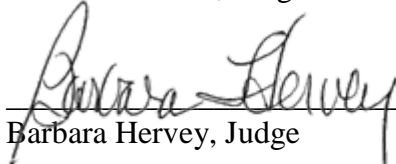
Dated: October 30, 2018.



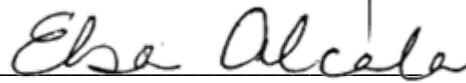
Sharon Keller, Presiding Judge



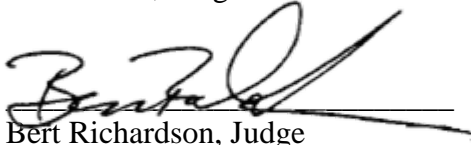
Michael Keasler, Judge



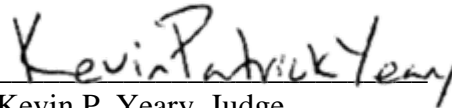
Barbara Hervey, Judge



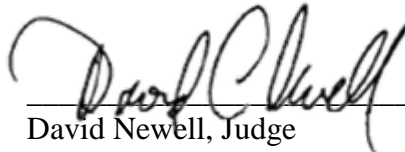
Elsa Alcala, Judge



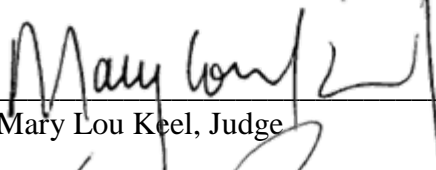
Bert Richardson, Judge



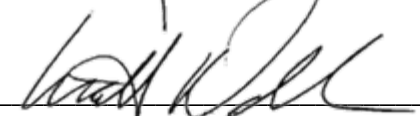
Kevin P. Yeary, Judge



David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

**Rule 73 Postconviction Applications for Writs of Habeas Corpus**

**73.1. Form for Application Filed Under Article 11.07 of the Code of Criminal Procedure**

\* \* \*

- (g) *Verification.* The application must be verified by either:
  - (1) oath made before a notary public or other officer authorized to administer oaths; or
  - (2) an unsworn declaration in substantially the form required by Civil Practice and Remedies Code chapter 132 as set out in the verification section of the application form.

\* \* \*

**73.4. Filing and Transmission of Habeas Record**

\* \* \*

- (b) In addition to the duties set out in Article 11.07, the district clerk shall do the following:

\* \* \*

(2) When any pleadings, objections, motions, affidavits, exhibits, proposed or entered findings of fact and conclusions of law, or other orders are filed or made a part of the record, the district clerk shall immediately send a copy to all parties in the case. A party has ten days from the date he receives the trial court's findings of fact and conclusions of law to file objections, but the trial court may, nevertheless, order the district clerk to transmit the record to the Court of Criminal Appeals before the expiration of the ten days. Upon transmission of the record, the district clerk shall immediately notify all parties in the case.

(3) When a district clerk transmits the record in a postconviction application for a writ of habeas corpus under Code of Criminal Procedure articles 11.07 or 11.071, the district clerk must prepare and transmit a summary sheet that includes the following information:

- (A) the convicting court's name and county, and the name of the judge who tried the case;
- (B) the applicant's name, the offense, the plea, the cause number, the sentence, and the date of sentence, as shown in the judgment of conviction;

- (C) the cause number of any appeal from the conviction and the citation to any published report;
- (D) whether a hearing was held on the application, whether findings of fact were made, any recommendation of the convicting court, and the name of the judge who presided over the application;
- (E) the name of counsel if applicant is represented; and
- (F) the following certification:

I certify that all applicable requirements of Texas Rule of Appellate Procedure 73.4 have been complied with in this habeas proceeding, including the requirement to serve on all the parties in the case any objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case.

\_\_\_\_\_  
Signature of District Clerk or Clerk's Representative      Date Signed

\* \* \*

Comment to 2018 change: Rules 73.1 and 73.4 are amended in conjunction with amendments to the form for applications filed under Article 11.07 of the Code of Criminal Procedure (Appendix E to these rules) and the Clerk's Summary Sheet (Appendix F to these rules). The amendments clarify terminology and procedures for filing Article 11.07 writ applications and update the Article 11.07 writ application form to incorporate current technologies and filing procedures. The application form will be made available on the internet through the Court of Criminal Appeals' website. In addition, the amendments bring the application and filing procedures into conformity with Civil Practice and Remedies Code chapter 132, which permits both inmates and non-inmates to file unsworn declarations in lieu of notarized oaths. Further, the rules amendments and changes to the clerk's summary sheet clarify the information that district clerks must provide to the Court of Criminal Appeals and add a new requirement that clerks certify that they have complied with all the requirements of Rule 73.4, including the requirement to serve on all parties in the case all objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case. The phrase "all parties in the case" as used in Rule 73.4 includes: the attorney representing the State; the applicant (including pro se and inmate applicants); and, if the applicant is represented by counsel, applicant's attorney.