

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 11-002

ORDER AMENDING TEXAS RULES APPELLATE PROCEDURE

It is hereby ordered that:

1. Pursuant to Texas Government Code §§ 22.108 and 22.109, the Texas Rules of Appellate Procedure are amended as noted in the attached documents.
2. Comments on these revisions may be submitted to the Court of Criminal Appeals in writing on or before June 30, 2011.
3. These amended rules, with any changes made after public comments are received, take effect on September 1, 2011.
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. submit a copy of this order for publication in the *Texas Register*.

SIGNED AND ENTERED this 14th of April, 2011.

Sharon Keller

Sharon Keller, Presiding Judge

Lawrence E. Meyers

Lawrence E. Meyers, Judge

Tom Price

Tom Price, Judge

Paul Womack

Paul Womack, Judge

Cheryl Johnson

Cheryl Johnson, Judge

Michael Keasler

Michael Keasler, Judge

Barbara Hervey

Barbara Hervey, Judge

Cathy Cochran

Cathy Cochran, Judge

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

Rule 50. Reconsideration on Petition for Discretionary Review

~~Within 60 days after a petition for discretionary review is filed with the clerk of the court of appeals that delivered the decision, the justices who participated in the decision may, as provided by subsection (a), reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.~~

~~(a) If the court's original opinion or judgment is corrected or modified, that opinion or judgment is withdrawn and the modified or corrected opinion or judgment is substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.~~

~~(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.~~

Notes and Comments

Comment to 2011 change: Rule 50 is abolished. Motions for rehearing serve the same purpose.

68.2. Time to File Petition

~~(a) *First Petition.* The petition must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing ~~or timely motion for en banc reconsideration~~ was overruled by the court of appeals.~~

Notes and Comments

Comment to 2011 change: The amendment to Rule 68.2(a) resolves timely filing questions concerning motions for en banc reconsideration by including those motions in calculating time to file.

68.3. Where to File Petition

(a) The petition and all copies of the petition must be filed with the clerk of the court of appeals, but if the State's Prosecuting Attorney files a petition, the State's Prosecuting Attorney may file the copies of the petition — but not the original— with the clerk of the Court of Criminal Appeals instead of with the court of appeals clerk.

(b) Petition Filed in Court of Criminal Appeals. If a petition is mistakenly filed in the Court of Criminal Appeals, the petition is deemed to have been filed the same day with the court of appeals clerk, and the Court of Criminal Appeals clerk must immediately send the petition to the court of appeals clerk.

Notes and Comments

Comment to 2011 change: Rule 68.3(b) is added to address and prevent the untimely filing of petitions for discretionary review that are incorrectly filed in the Court of Criminal Appeals rather than in the court of appeals.

68.7. Court of Appeals Clerk's Duties

(a) On Filing of the Petition. Upon receiving the petition, the court of appeals clerk must file the original petition and note the filing on the docket.

(b) Reply. The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) Sending Petition and Reply to Court of Criminal Appeals. ~~Unless a petition for discretionary review is dismissed under Rule 50,~~ the clerk of the court of appeals must, within 60 days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

Notes and Comments

Comment to 2011 change: Rule 68.7(c) is amended to delete reference to Rule 50, which is abolished.

68.11. Service on State Prosecuting Attorney

In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.

Notes and Comments

Comment to 2011 change: The address for the State Prosecuting Attorney is deleted because it has changed and may change again.

79.2. Contents

(a) The motion must briefly and distinctly state the grounds and arguments relied on for rehearing.

(b) A motion for rehearing an order that grants discretionary review may not be filed.

(c) A motion for rehearing an order that refuses ~~or dismisses~~ a petition for discretionary review may be grounded only on substantial intervening circumstances ~~or on other significant circumstances~~ which are specified in the motion. Counsel must certify that the motion is so grounded and that the motion is made in good faith and not for delay.

(d) A motion for rehearing an order that denies habeas corpus relief under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case.

Notes and Comments

Comment to 2011 change: Rule 79.2(c) is amended so that it applies only to petitions for discretionary review that are refused. Additionally, the certification requirement is changed to encompass a broader basis for rehearing.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20__.

Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name: _____

State bar number, if applicable: _____

Address: _____

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, _____, am the applicant / petitioner (circle one) and being presently incarcerated in _____, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on _____, 20____.

Signature of Applicant / Petitioner (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name: _____

Address: _____

Telephone: _____

Fax: _____

Signed on _____, 20____.

Signature of Petitioner