

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 16-005

ORDER ADOPTING AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 9.4, 72.2, and 73.7

ORDERED that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 9.4, 72.2, and 73.7, effective February 1, 2017.
2. These rules may be changed in response to public comments received before January 20, 2017. Any interested party may submit written comments directed to Abel Acosta, Clerk of the Court, at abel.acosta@txcourts.gov.
3. 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: December 1, 2016.

Sharon Keller

Sharon Keller, Presiding Judge

Lawrence E. Meyers

Lawrence E. Meyers, Judge

Cheryl Johnson

Cheryl Johnson, Judge

Michael Keasler

Michael Keasler, Judge

Barbara Hervey

Barbara Hervey, Judge

Elsa Alcala

Elsa Alcala, Judge

Bert Richardson

Bert Richardson, Judge

Kevin P. Yeary

Kevin P. Yeary, Judge

David Newell

David Newell, Judge

9.4. Form. . . .

(i) Length. . . .

(D) A petition and response in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except for petitions and responses in an original proceeding in a case in which the death penalty has been assessed, a petition for review and response in the Supreme Court, a petition for discretionary review in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except a reply to a response in an original proceeding in a case in which the death penalty has been assessed, and a reply to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(F) A petition and response in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 9,000 words if computer-generated, and 30 pages if not.

(G) A reply to a response to a petition in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 4,800 words if computer-generated, and 16 pages if not.

72.2. Disposition

If five judges tentatively believe that the case should be filed and set for submission, the motion for leave will be granted and the case will then be handled and disposed of in accordance with Rule 52.8. If the motion for leave is denied, no motions for rehearing or reconsideration will be entertained. But the Court may, on its own initiative, reconsider a denial of a motion for leave.

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

Rule 73.7. New Evidence After Application Forwarded to Court of Criminal Appeals

If an Article 11.07 or 11.071 application has been forwarded to this Court, and a party wishes this Court to consider evidence not filed in the trial court, then the party must comply with the following procedures or the evidence will not be considered.

(a) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction and has filed and set the application for submission, a party has two options:

(1) The party may file the evidence directly in the Court of Criminal Appeals with a motion for the Court of Criminal Appeals to consider the evidence. In this motion, the party should describe the evidence, explain its evidentiary value, and

state why compelling and extraordinary circumstances exist for the Court of Criminal Appeals to consider the evidence directly. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants this motion, the Court will consider the evidence in its review of the application. The Court of Criminal Appeals will grant such a motion only if the Court concludes the circumstances are truly exceptional.

(2) The party may file in the Court of Criminal Appeals a motion to supplement the record in the trial court. In this motion, the party should describe the evidence the party intends to file, explain its evidentiary value, and state why the evidence could not have been filed in the trial court before the Court of Criminal Appeals filed and set the application for submission. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the party may file the evidence with the district clerk of the county of conviction, and should attach a copy of the motion to supplement and the Court of Criminal Appeals' order granting said motion. The district clerk shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

(b) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction, but the Court has not yet filed and set the application for submission, the party must file in the Court of Criminal Appeals a motion to stay the proceedings pending the filing of the evidence in the trial court. In this motion, the party should describe the evidence the party intends to file and explain its evidentiary value. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the Court will specify a designated time frame for the party to file the evidence with the district clerk of the county of conviction. The party should attach a copy of the motion to stay proceedings and the Court of Criminal Appeals' order granting said motion to the evidentiary filing. The district clerk of the county of conviction shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

Comment to 2017 change: Rule 73.7 is added. This rule only applies after an Article 11.07 or 11.071 application has been forwarded to the Court of Criminal Appeals. If an Article 11.07 or 11.071 application is pending in the trial court and has not been forwarded to the Court of Criminal Appeals, a party may file additional evidentiary materials with the district clerk of the county of conviction without filing any special motion in the Court of Criminal Appeals or the trial court. But the district clerk of the county of conviction still must immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.