

Supreme Court of Texas

Misc. Docket No. 21-9155

Final Approval of Amendments to Texas Rule of Appellate Procedure 57

ORDERED that:

1. On August 27, 2021, in Misc. Dkt. No. 21-9100, the Court preliminarily approved amendments to Texas Rule of Appellate Procedure 57, effective January 1, 2022, and invited public comment.
2. No comments were received, but additional changes have been made to the rule. This Order contains the final version of the amendments to Rule 57, effective January 1, 2022.
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 this Order for publication in the *Texas Register*.

Dated: December 20, 2021.

Rule 57. Direct Appeals to the Supreme Court

57.1. Application

~~Except when inconsistent with a statute, this rule governs direct appeals to the Supreme Court that are authorized by the Constitution and by statute. Except when inconsistent with a statute or this rule, the rules governing appeals to courts of appeals also apply to direct appeals to the Supreme Court.~~

57.2. ~~Jurisdiction~~Perfecting Direct Appeal

~~The Supreme Court may not take jurisdiction over a direct appeal from the decision of any court other than a district court or county court, or over any question of fact. The Supreme Court may decline to exercise jurisdiction over a direct appeal of an interlocutory order if the record is not adequately developed, or if its decision would be advisory, or if the case is not of such importance to the jurisprudence of the state that a direct appeal should be allowed.~~

- (a) Notice of Direct Appeal. A direct appeal to the Supreme Court authorized by law is perfected when a written notice of direct appeal is filed with the trial court clerk. The notice of direct appeal must be filed within the time provided by Rule 26.1 or as extended by Rule 26.3. The trial court clerk must immediately send a copy of the notice of direct appeal to the clerk of the Supreme Court. If a notice of direct appeal is mistakenly filed with the Supreme Court or the court of appeals, the notice is deemed filed the same day with the trial court clerk, and the Supreme Court clerk or the court of appeals' clerk must immediately send the trial court clerk a copy of the notice.
- (b) Contents of Notice. The notice of direct appeal must:
- (1) identify the trial court and state the case's trial court number and style;
 - (2) state the date of the judgment or order appealed from;
 - (3) state that the party desires to take a direct appeal to the Supreme Court;
 - (4) state the name of each party filing the notice;
 - (5) specify the law or laws under which the direct appeal is authorized;
 - (6) in an accelerated appeal, state that the appeal is accelerated; and
 - (7) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1.

- (c) Amending the Notice. An amended notice of direct appeal correcting a defect or omission in an earlier filed notice may be filed with the Supreme Court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the Supreme Court and on such terms as the Supreme Court may prescribe.
- (d) Other Requirements. Promptly upon filing the notice of direct appeal, appellant must file in the Supreme Court a docketing statement as provided in Rule 32.1 and pay all required fees authorized to be collected by the clerk of the Supreme Court.
- (e) The Appellate Record. Rules 34 and 35 governing the appellate record apply to direct appeals to the Supreme Court.

57.3. **Statement of Jurisdiction of Supreme Court**

- (a) Statement of Jurisdiction. The Appellant must file with ~~the record~~ the Supreme Court a statement ~~fully but~~ of jurisdiction within ten days after the notice of appeal is filed with the trial court clerk.
- (b) Contents of Statement. The statement of jurisdiction must plainly ~~setting out~~ state the basis ~~asserted~~ for ~~the~~ exercise of the Supreme Court's direct appeal jurisdiction; ~~insofar as appropriate, follow the form and contents of a petition for review prescribed by Rule 53; and conform to the length requirements prescribed for a petition for review by Rule 9.4.~~
- (c) Response to Statement. An Appellee may file a response to ~~the~~ appellant's statement of jurisdiction challenging the exercise of direct appeal jurisdiction or a waiver of the response within ten days after the statement is filed with the Supreme Court. ~~If filed, the response must, insofar as appropriate, follow the form and contents of a response to a petition for review prescribed by Rule 53 and conform to the length requirements prescribed for a response to a petition to review by Rule 9.4.~~

57.4. **Preliminary Ruling on Probable Jurisdiction; Dismissal of Appeal**

~~If the Supreme Court notes probable jurisdiction over a direct appeal, the parties must file briefs under Rule 38 as in any other case. The Supreme Court may determine whether the Court has probable jurisdiction based on the statement of jurisdiction and any response. If the Supreme Court determines that it does not ~~note probable~~ have or will not exercise jurisdiction over a direct appeal, the ~~appeal~~ Court will ~~be dismissed~~ the appeal.~~

57.5. Direct Appeal Exclusive While Pending:

If a direct appeal to the Supreme Court is filed, the parties to the appeal must not, while that appeal is pending, pursue an appeal to the court of appeals. But if the direct appeal is dismissed, any party may pursue any other appeal available at the time when the direct appeal was filed. The other appeal must be perfected within ~~ten~~15 days after dismissal of the direct appeal or the date of the Supreme Court's ruling on a timely filed motion for rehearing.

57.6. Determination of Direct Appeal

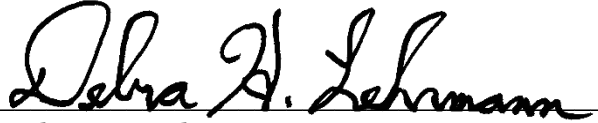
- (a) Ruling on Merits. If the Supreme Court determines that it has probable jurisdiction, the Court:
- (1) may request full briefing under Rule 55;
 - (2) may set the case for submission under Rule 59; and
 - (3) may render judgment or make an appropriate order under Rule 60.
- (b) Rehearing. A motion for rehearing may be filed with the Supreme Court clerk within 15 days after the Court renders judgment or makes an order disposing of the direct appeal. The motion must clearly state the issues relied on for rehearing.

Notes and Comments

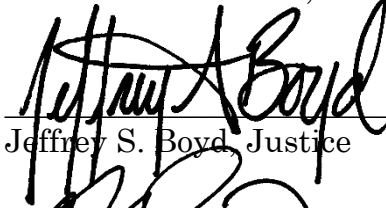
Comment to 1997 change: This is former Rule 140. The rule is amended without substantive change except subdivision 57.5 is amended to make clear that no party to the direct appeal may pursue the appeal in the court of appeals while the direct appeal is pending, but allowing 10 days to perfect a subsequent appeal.



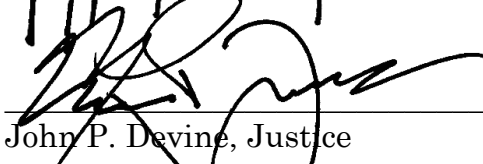
Nathan L. Hecht, Chief Justice



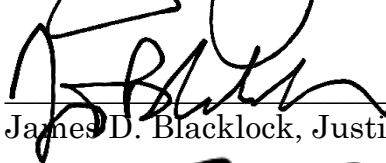
Debra H. Lehrmann, Justice



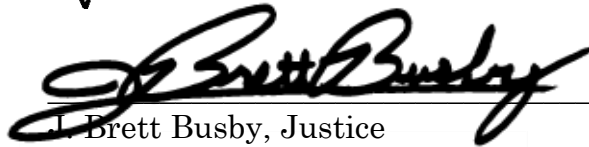
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



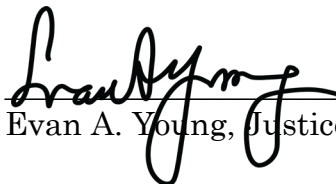
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice