

PROCEDURE UPDATE: A REVIEW OF RECENT DEVELOPMENTS IN PROCEDURAL RULES THAT MAY IMPACT YOUR APPELLATE PRACTICE

Kennon L. Wooten
Scott Douglass & McConnico LLP

1

A PRIMER ON RULEMAKING BY THE SUPREME COURT OF TEXAS (SCOTX)

- ❖ It's a team effort driven by legislative mandates, perceived need, etc.
- ❖ See *How Texas Court Rules Are Made*, available on the SCOTX website under Rules & Forms (top menu)/Rules & Standards.
- ❖ All administrative orders are also available on the SCOTX website, under the Administrative Orders tab (in the top-left menu box on main page).
- ❖ Noteworthy rules orders are also sent by email to the SCOTX's listserv. Subscribe on the SCOTX website, if you haven't already done so.

2

AMENDED DIRECT APPEAL RULE (EFFECTIVE 1/1/2022)

- ❖ See Misc. Docket No. 21-9155 (Attachment A)
- ❖ Extensive amendments to TRAP 57 (think complete rewrite)
- ❖ Problem: Prior rule provided minimum guidance
- ❖ Fix: New rule provides extensive guidance
- ❖ Bottom Line: If you ever find yourself in the rare position of filing a direct appeal with the SCOTX, read and follow revised TRAP 57.

3

AMENDED ORAL ARGUMENT RULE (EFFECTIVE 2/1/2023)

- ❖ See Misc. Docket Nos. 23-9001; 22-9089 (Attachments B-1 and B-2)
- ❖ Amendments to TRAP 39.7
- ❖ The prior rule required a party to request oral argument on the front cover of its brief and provided that a failure to do so waived the right to argue.
- ❖ Issues arose...
- ❖ The amended rule makes it clear that, if a court of appeals sets a case for oral argument, *all* parties that filed a brief are entitled to participate.

4

AMENDED COUNSEL DISCLOSURE RULE (EFFECTIVE 8/1/2022)

- ❖ See Misc. Docket No. 22-9057 (Attachment C)
- ❖ Amendments to TRAP 38.1, 52.3, 53.2, and 55.2
- ❖ The prior rules required disclosure of “all counsel,” which was sometimes construed to refer only to counsel at the time of final judgment and appeal.
- ❖ Problem: With that degree of disclosure, justices sometimes did not identify the need for recusal or disqualification at the outset
- ❖ Fix: Requires information about “all counsel appearing in the trial or appellate courts” and imposes a duty to supplement disclosures

5

AMENDED EN BANC & REHEARING RULES (EFFECTIVE 10/1/2021)

- ❖ See Misc. Docket No. 21-9110 (Attachment D)
- ❖ Amendments to TRAP 10.1, 19.1, 41.2, 47.5, 49, 53.7
- ❖ Problem: Prior TRAP 49.5 caused confusion about the timing of filing a motion for en banc reconsideration
- ❖ Fix: New TRAP 49.5 clarifies that it should be filed at the same time as a motion for rehearing (i.e., 15 days after judgment/order)
- ❖ Other rule changes clarify terminology, rearrange content, and add standards and guidance about en banc consideration and rehearing

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Procedure Update: A Review of Recent Developments In Procedural Rules That May Impact Your Appellate Practice

First appeared as part of the conference materials for the
33rd Annual Conference on State and Federal Appeals session
"Procedure Update"