

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-010

ORDER PROPOSING TEXAS RULE OF APPELLATE PROCEDURE 4.6

ORDERED that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals proposes Rule of Appellate Procedure 4.6.
2. This amendment may be changed in response to public comments received before July 6, 2018. Any interested party may submit written comments to the Court of Criminal Appeals at txccarulescomments@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: April 30, 2018.

Sharon Keller
Sharon Keller, Presiding Judge

Michael E. Keasler
Michael Keasler, Judge

Barbara Hervey
Barbara Hervey, Judge

Elsa Alcalá
Elsa Alcalá, Judge

Bert Richardson
Bert Richardson, Judge

Kevin Patrick Yeary
Kevin P. Yeary, Judge

David Newell
David Newell, Judge

Mary Lou Keel
Mary Lou Keel, Judge

Scott Walker
Scott Walker, Judge

Tex. R. App. P. 4.6. No Notice of Trial Court's Appealable Order on a Motion for Forensic DNA Testing

- (a) *Additional Time to File Notice of Appeal.* If an adversely affected defendant or the defendant's attorney did not receive notice or acquire actual knowledge of the signing of an order appealable under Code of Criminal Procedure Chapter 64 within twenty days after the signing, then the time periods under these rules which ordinarily run from the signing of an appealable order will begin to run on the earliest date when the defendant or the defendant's attorney received notice or acquired actual knowledge of the signing. But in no event shall such periods begin more than 120 days after the day the trial judge signed the appealable order.
- (b) *Procedure to Gain Additional Time.* In order to establish the application of paragraph (a) of this rule, the defendant adversely affected must prove in the trial court the earliest date on which the defendant or the defendant's attorney first received notice or acquired actual knowledge that the trial judge signed the appealable order, and the defendant must prove that this date was more than twenty days after the signing. The motion must be in writing and sworn, state the defendant's desire to appeal from the appealable order, state the earliest date when the defendant or the defendant's attorney first received notice or acquired actual knowledge of the signing, be filed within 120 days of the signing, and comply with Rule 10.5(b)(2). If the defendant's motion for additional time meets the above requirements, the motion may serve as the defendant's notice of appeal.
- (c) *The Court's Order.* After hearing the motion for additional time, the trial judge must sign a written order that determines the earliest date when the defendant or the defendant's attorney first received notice or acquired actual knowledge that the trial judge signed the appealable order.
- (d) *The Clerk's Duties.* Upon the filing of a motion for additional time, the trial court clerk must immediately (as they are filed or entered in the record) forward copies of the defendant's motion for additional time, the trial judge's written order under subsection (c), the order the defendant seeks to appeal, and any exhibits and related documents to the attorney representing the State. Also upon the filing of a motion for additional time, the trial court clerk must immediately (as they are filed or entered in the record) forward copies of the trial judge's written order under subsection (c), the order the defendant seeks to appeal, and any State's response, exhibits, and related documents to the defendant and the attorney representing the defendant, if any.

Comment to 2018 change: Rule 4.6 is intended to provide redress for criminal defendants who are entitled to appeal trial court rulings made pursuant to Texas Code

of Criminal Procedure Chapter 64, but receive late or no notice of the rulings. The rule allows a defendant additional time to file a notice of appeal when neither the defendant nor the defendant's attorney received notice or acquired actual knowledge of the signing of the appealable order within the first 20 days after the signing. The rule is based on the framework of Rule of Appellate Procedure 4.2 and Texas Rule of Civil Procedure 306a, but is intended to apply only in the limited context of appealable rulings on Chapter 64 motions. If a trial judge grants a defendant's motion for additional time filed under this rule, the court of appeals may treat the defendant's late-filed notice of appeal as timely or treat the motion for additional time itself as a notice of appeal for the purpose of determining compliance with Rules 25.2 and 26.2.