

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-020

ORDER ADOPTING TEXAS RULE OF APPELLATE PROCEDURE 4.6

ORDERED that:

1. On April 30, 2018, the Court of Criminal Appeals signed an order proposing Rule of Appellate Procedure 4.6 and invited public comment. After receiving public comments, the Court of Criminal Appeals has revised the rule. This order incorporates those revisions and contains the final version of the rule.
2. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals adopts Rule of Appellate Procedure 4.6.
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: October 8, 2018.

Sharon Keller, Presiding Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Elsa Alcala, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

Mary Lou Keel, Judge

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 neither an adversely affected defendant nor the defendant's attorney received notice or acquired actual knowledge that the trial judge signed an order appealable under Code of Criminal Procedure Chapter 64 within twenty days after the signing, then the time periods under these rules that 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) *Motion to Gain Additional Time.*
 - (1) A defendant's motion for additional time must:
 - (A) Be in writing and sworn;
 - (B) State the defendant's desire to appeal from the appealable order;
 - (C) State the earliest date when the defendant or the defendant's attorney received notice or acquired actual knowledge that the trial judge signed the appealable order; and
 - (D) Be filed within 120 days of the signing of the appealable order.
 - (2) To establish the application of paragraph (a) of this rule, the defendant adversely affected must prove in the trial court:
 - (A) The earliest date on which the defendant or the defendant's attorney received notice or acquired actual knowledge that the trial judge signed the appealable order; and
 - (B) That this date was more than twenty days after the signing of the appealable order.
 - (3) If the defendant's motion for additional time meets the requirements set out in paragraphs (b)(1) and (b)(2), 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 received notice or acquired actual knowledge that the trial judge signed the appealable order and whether this date was more than twenty days after the judge signed the appealable order.
- (d) *The Clerk's Duties.* The trial court clerk must immediately (as they are filed or entered in the record) forward to all parties in the case 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, any State's response, and any exhibits and related documents.

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. The term "sworn" in Rule 4.6 includes the use of an unsworn declaration made under penalty of perjury. *See* TEX. CIV. PRAC. & REM. CODE § 132.001. 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.