

LEGISLATIVE UPDATE:

Appellate Practice

The most significant legislation from this session affecting appellate practice is a change to the jurisdiction of the Supreme Court of Texas. Other legislation ends the practice of counter-superseding non-monetary judgments against government entities and requires both of the State's highest courts to post video recordings of oral arguments.

Supreme Court of Texas Jurisdiction

Effective September 1, 2017, House Bill 1761 changed the jurisdiction of the Supreme Court of Texas (to be codified as amendments to Tex. Gov't Code §§ 22.001, 22.007, and 22.225).

On one hand, the new law restricts the Court's jurisdiction. Previously, jurisdiction could be based on any one of multiple grounds, including a conflict among the courts of appeals, a dissent below, or the construction or validity of a statute. The new law removes all these grounds except one: "a question of law that is important to the jurisprudence of the state." Thus, the Court may still have jurisdiction over cases that fell under the former jurisdictional grounds, but only if they involve a legal question that is important to the jurisprudence of the state.

On the other hand, the new law also expands the Court's jurisdiction. The expressed intent of its sponsor in the House was to expand the Court's jurisdiction to review interlocutory orders, and the new law removes all statutory limitations on that jurisdiction. For example, appeals from

interlocutory orders granting or denying temporary injunctions and orders appointing receivers or trustees may now be taken from the courts of appeals to the Supreme Court of Texas. The new law also removes prohibitions on the Court's review of certain types of cases, including contested local elections and cases in which a county court would have had jurisdiction. Even though the Court is no longer barred from reviewing these entire categories of cases, it still may exercise jurisdiction over a specific case only if it presents an issue that is "important to the jurisprudence" of Texas.

Counter-Superseding Non-Monetary Judgments Against Government Entities

House Bill 2776 ends the practice of counter-superseding judgments against government entities (to be codified as additions to Tex. Gov't Code §22.004).

Civil Practice and Remedies Code §§ 6.001-6.004 allow government entities to supersede a judgment without a bond. In effect, a government entity's notice of appeal automatically supersedes the judgment. However, Texas Rule of Appellate Procedure 24.2(a)(3) allows the trial court to refuse to permit a non-monetary, non-

property judgment to be superseded if the judgment creditor posts appropriate security—known as counter-superseding. The Supreme Court of Texas has held that notwithstanding the statute, Rule 24.2(a)(3) allows a party to counter-supersede a judgment against a government entity.¹

The new law ends this practice. Specifi-

cally, it requires the Court to adopt rules providing that the right of government entities under the Civil Practice and Remedies Code to supersede a judgment is not subject to being counter-superseded under Rule 24.2(a)(3) or otherwise. Counter-supersedeas remains available, however, in cases concerning administrative enforcement actions.


The changes to the Government Code were effective September 1, 2017, but the Court is not required to adopt rules implementing the change until May 1, 2018.

Videotaping Oral Argument at the Texas Court of Criminal Appeals

House Bill 214 requires both of the State's highest courts to post video recordings of all oral arguments and public meetings online (to be codified as Tex. Gov't Code § 22.303). Although the Supreme Court of Texas has already done so for ten years, the Texas Court of Criminal Appeals has not.

The new rule became effective September 1, 2017, but available appropriated funds or donations are a condition to its implementation.

Bills that Failed to Pass

Other bills that would have affected appellate practice failed to pass, but may be reintroduced in future sessions. Examples include legislation that would have: split the Thirteenth Court of Appeals in Corpus Christi in two, creating a Fifteenth Court of Appeals in the Rio Grande Valley (House Bill 474); further expedited appeals in suits affecting the parent-child relationship (House Bill 687); created "chancery" trial and appellate courts to hear certain business-related cases (House Bill 2594); and codified a formula for automatically adjusting salaries of appellate justices (House Bill 3971). 

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Endnotes

1. *In re State Bd. for Educator Certification*, 452 S.W.3d 802, 802-09 (Tex. 2014).