

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 08-100

ORDER AMENDING TEXAS RULES OF EVIDENCE AND APPELLATE PROCEDURE

It is hereby ORDERED that:

1. Pursuant to Texas Government Code §§ 22.108 and 22.109, the Texas Rules of Evidence and the Texas Rules of Appellate Procedure are amended as follows.
2. Comments on these revisions may be submitted to the Court of Criminal Appeals in writing on or before June 30, 2008.
3. These amended rules, with any changes made after public comments are received, take effect September 1, 2008.
4. 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 before December 1, 2008; and

- d. submit a copy of this Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 4th day of March, 2008.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Tom Price, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Charles Holcomb, Judge

Cathy Cochran, Judge

TEXAS RULES OF EVIDENCE

Rule 503. Lawyer-Client Privilege

(a) **Definitions.** [no change]

(b) **Rules of Privilege. General Rule of Privilege.**

~~(1) General rule of privilege.~~ A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

~~(1) (A)~~ between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

~~(2) (B)~~ between the lawyer and the lawyer's representative;

~~(3) (C)~~ by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

~~(4) (D)~~ between representatives of the client or between the client and a representative of the client;
or

~~(5) (E)~~ among lawyers and their representatives representing the same client.

~~(2) Special rule of privilege in criminal cases. In criminal cases, a client has a privilege to prevent the lawyer or lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.~~

(c) **Who May Claim the Privilege.** [no change]

(d) **Exceptions.** [no change]

Comment to 2008 Amendment:

This rule governs only the lawyer-client privilege. The deletion of former Rule 503(b)(2) [Special rule of privilege in criminal cases] is not intended to restrict the scope of either the work-product doctrine or the lawyer's professional duty not to reveal the confidential information of a client. See Texas Disciplinary Rule of Professional Conduct 1.05.

TEXAS RULES OF APPELLATE PROCEDURE

RULE 26.2. Criminal Cases

(a) *By the defendant.* [no change]

(b) *By the State.* The notice of appeal must be filed within ~~±5~~ 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

RULE 50. Reconsideration on Petition for Discretionary Review

Within ~~60~~ 30 days after a petition for discretionary review ~~is has been~~ filed with the clerk of the court of appeals that delivered the decision, ~~a majority of the justices who participated in the decision may,~~ as provided by subsection (a), summarily reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, ~~that the original~~ opinion or judgment ~~is must be~~ withdrawn and the modified or corrected opinion or judgment ~~is must be~~ substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

68.7. Court of Appeals Clerk's Duties

(a) *On Filing of the Petition.* [**no change**]

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) ~~(b)~~ *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within ~~60~~ 30 days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

68.9 **Reply**

~~———The opposing party has 30 days after the timely filing of the petition in the Court of Criminal Appeals—unless additional time is allowed—to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing a reply has expired, the petition will be treated as submitted to the Court and ready for disposition.~~

