

TO: SCAC Committee Members  
FROM: David Gaultney  
RE: Report of Subcommittee on Categorization of Cases  
as Criminal or Civil  
DATE: June 7, 2008

*The Issue:*

Texas Rule of Appellate Procedure 12.2(a)(4) provides that the clerk of a court of appeals, when assigning a docket number to a case filed in the court of appeals, include the designation "CV" for a civil case or "CR" for a criminal case. The Council of Chief Justices requested a study on "whether the Rules of Appellate Procedure should provide guidance on how to classify certain cases as civil or criminal." The letter from the Chair of the Council states, "It has been brought to our attention that the courts of appeals are split in whether they designate certain proceedings as criminal or civil."

The designation of a case as civil or criminal may have consequences beyond docketing:

1. The designation of a case might be assumed by a party to be consistent with the jurisdictions of the Court of Criminal Appeals and the Supreme Court. The Court of Criminal Appeals has jurisdiction over criminal cases and the Supreme Court has jurisdiction over civil cases. The type of case suggests which case law is applicable and where the next proceeding, after the court of appeals, should be filed. *See generally Ex parte Rhodes*, 974 S.W.2d 735, 740 (Tex. Crim. App. 1998) (prior criminal contempt in civil proceeding considered civil case, so "we are bound by Texas Supreme Court precedent on this matter . . .").

2. Filing fees are charged in civil cases but generally not in criminal cases. *See generally* TEX. GOV'T CODE ANN. § 51.207 (Vernon 2005); *see also generally* TEX. R. APP. P. 5.

3. The file retention periods are different for civil and criminal cases. *See* TEX. GOV'T CODE ANN. § 51.204 (Vernon 2005). In criminal cases, the retention period is determined by the length of the sentence. *See id.* § 51.204(e) (Vernon 2005).

### *The Jurisdiction of the Supreme Court and the Court of Criminal Appeals:*

What is a criminal or a civil case is defined by the Supreme Court and the Court of Criminal Appeals as they assess their jurisdiction. The Supreme Court has noted that a criminal case is an action, suit, or cause instituted to secure conviction and punishment for crime. *Ex parte Green*, 116 Tex. 515, 295 S.W. 910, 912 (1927). More recently, the Court of Criminal Appeals has said that the “over-riding principle” “is that this Court will entertain an appeal when it is expressly authorized by statute and when it is related to the ‘standard definition’ of a criminal case.” *Kutzner v. State*, 75 S.W.3d 427, 431 (Tex. Crim. App. 2002), *superseded on other grounds by statute, as explained in Smith v. State*, 165 S.W.3d 361 (Tex. Crim. App. 2005).

The Court of Criminal Appeals has general writ jurisdiction “in criminal law matters.” Generally, this means “[d]isputes which arise over the enforcement of statutes governed by the Texas Code of Criminal Procedure, and which arise as a result of or incident to a criminal prosecution....” *Curry v. Wilson*, 853 S.W.2d 40, 43 (Tex. Crim. App. 1993). The term includes “all legal issues arising directly out of a criminal prosecution.” *Lanford v. Fourteenth Court of Appeals*, 847 SW2d 581, 585 (Tex. Crim. App. 1993)

The Supreme Court has broad mandamus jurisdiction, including over criminal law matters. TEX. CONST. art. V, § 3. Although the Supreme Court has mandamus jurisdiction over criminal law matters, the Court generally transfers the petition to the Court of Criminal Appeals. *See, e.g., Thomas v. Stevenson*, 561 S.W.2d 845 (Tex. Crim. App. 1978).

Similarly, the Court of Criminal Appeals has broad habeas corpus jurisdiction, but generally will refrain from issuing a writ in a case where relief could be sought in the Texas Supreme Court. *See Ex parte Wolf*, 116 Tex. Crim. 127, 34 S.W.2d 277, 279 (1930).

Before the *Kutzner* decision, one commentator suggested that:

“The Court of Criminal Appeals would be well-advised to reconsider its traditional case law defining “criminal case,” especially in light of its more recent decisions defining “criminal law matters” in which it may now exercise extraordinary writ power . . . [T]he value of having criminal law matters subject to final review in the appellate court with

general final authority in criminal prosecutions argues strongly for construing “criminal case” as including those that are ancillary to criminal prosecutions, even if they are not in a technical sense prosecutions of particular individuals for specific criminal offenses.” GEORGE E. DIX & ROBERT O. DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE AND PROCEDURES § 44.02 (2nd ed. 2001).

In *Kutzner*, the Court of Criminal Appeals used the language “related to.”

*Conflicts in the Courts of Appeals:*

Courts of appeals have reached differing results on designation of some cases as civil or criminal. Jody Hughes’s Memo of March 3, 2008, available on the SCAC website, identifies certain splits among the courts.

Courts may have relied on the traditional classification of a type of proceeding. For example, a petition for writ of mandamus may be docketed as a civil case in the court of appeals, even when the next step in the process is to the Court of Criminal Appeals. *See generally Ex parte Rieck*, 144 S.W.3d 510, 515-16 (Tex. Crim. App. 2004) (noting that most jurisdictions have traditionally regarded habeas corpus as a civil remedy, though in Texas such proceedings arising from criminal prosecutions or convictions are categorized as “criminal” for jurisdictional purposes).

Bail forfeiture proceedings suggest another reason for differences in designation. The Code of Criminal Procedure provides:

When a forfeiture has been declared upon a bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, if any, as defendants; and, except as otherwise provided by this chapter, the proceedings had therein shall be governed by the same rules governing other civil suits. TEX. CODE CRIM. PROC. § 22.10 (Vernon Supp. 2007).

A clerk may designate a case as CV (a civil case), because that is how it is docketed in the trial court. However, the Court of Criminal Appeals has held that bond forfeiture is a criminal matter, and section 22.10 does not change the character of the

case. *See Kubosh v. State*, 241 S.W.3d 60, 64 (Tex. Crim. App. 2007); *State v. Sellers*, 790 S.W.2d 316, 321 (Tex. Crim. App. 1990); *see also State ex rel. Rodriguez v. Marguez*, 4 SW.3d 227 (Tex. Crim. App. 1999)(mandamus).

*The Recommended Amendment:*

Rather than designating a case as civil or criminal based on the traditional classification of the proceeding, or based on the trial court's docket designation, the committee recommends the designation be consistent with the jurisdictions of the Supreme Court and the Court of Criminal Appeals. The designations by the clerks of the courts of appeals should be uniform throughout the State, and the designation on filing should be consistent with which of the two courts -- the Supreme Court or the Court of Criminal Appeals -- will subsequently have jurisdiction over the case.

The committee recommends amending Rule 12.2(a)(4) as follows:

“the designation ‘CV’ for causes over which the Supreme Court exercises jurisdiction, including appeals related to civil cases and original proceedings in civil law matters; or  
the designation ‘CR’ for causes over which the Court of Criminal Appeals exercises jurisdiction, including appeals related to criminal cases and original proceedings in criminal law matters.”

*Other Possible Consequences of the Proposed Amendment:*

**Fees:**

This amendment may result in appellate filing fees not being charged in certain “criminal” cases, previously docketed as “civil.” *See* TEX. GOV'T CODE ANN. § 51.207 (Vernon 2005)(fees and costs in a “civil” case).

**Retention of Files:**

The suggested amendment to Rule 12.2(a)(4) could result in a different retention period for “criminal” files previously designated “civil.” *See* TEX. GOV'T CODE ANN. § 51.204 (Vernon 2005).

*A Related Concern:*

If a case is incorrectly designated and a party files in the wrong court, should there be a provision in the rules concerning transfer of the case between the Supreme Court and the Court of Criminal Appeals to preserve a timely filing?