



SMU

*William V. Dorsaneo III*

Chief Justice John and Lena Hickman Distinguished Faculty Fellow  
and Professor of Law

To: Members of the Texas Supreme Court Advisory Committee  
cc: Chief Justice Nathan L. Hecht, Chip Babcock, Pam Baron, Justice  
Brett Busby, Blake Hawthorne, Martha Newton, Marti Walker  
Subject: Proposed Appellate Rule 57  
Date: May 11, 2016

Here is a revised draft which adds a new subdivision designed to integrate review of supersedeas disputes into Proposed Appellate Rule 57. Any comments will be appreciated.

The reason for a new subdivision is explained in Roger Hughes email dated May 5, 2016, which is attached to this memorandum.

School of Law

Southern Methodist University PO Box 750116 Dallas TX 75275-0116

214-768-2626 Fax 214-768-4330 wdorsane@mail.smu.edu

**Rule 57.      *Direct Appeals to Texas Supreme Court***

**57.1   *Perfecting Direct Appeal***

(a) *Notice of Appeal.* A direct appeal to the Supreme Court permitted by law is perfected when a written notice of appeal is filed with the trial court clerk within the time provided by Rule 26.1 or as extended by Rule 26.3. The trial court clerk must immediately send a copy of the notice of appeal to the clerk of the Supreme Court. If a notice of appeal is mistakenly filed with the clerk of the Supreme Court or with the clerk of a court of appeals, the notice is deemed filed the same day with the trial court clerk and the Supreme Court clerk or the court of appeals' clerk must immediately send the trial court clerk a copy of the notice.

(b) *Contents of Notice.* The notice of direct appeal must:

- (1) identify the trial court and state the case's trial court number and style;
- (2) state the date of the judgment or order appealed from;
- (3) state that the party desires to take a direct appeal to the Supreme Court;
- (4) state the name of each party filing the notice; and
- (5) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1(a)(3).

(c) *Amending the Notice.* An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the Supreme Court at any time before the [appellant's *or* petitioner's] brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the [appellant's *or* petitioner's] brief is filed, the notice may be amended only on leave of the Supreme Court on such terms as the court may prescribe.

(d) *Other Requirements.* The [appellant *or* petitioner] must also file with the clerk of the Supreme Court a docketing statement as provided in Rule 32.1 and pay all required fees authorized to be collected by the clerk of the Supreme Court.

## **57.2 Jurisdiction of Supreme Court.**

(a) *Statement of Jurisdiction.* In addition to perfecting the appeal, the appellant [or petitioner] must file with the clerk of the Supreme Court a statement of jurisdiction within \_\_\_\_ days after the notice of appeal is filed with the trial court clerk.

(b) *Contents of Statement of Jurisdiction.* The statement of jurisdiction must plainly state the basis for the exercise of the Supreme Court's direct appeal jurisdiction. [The statement of jurisdiction also must] follow the form and contents of a petition for review prescribed by Rule 53 and conform to the length requirements prescribed for a petition for review by Rule 9.4. (*redrafted after 4/19 SCAC meeting*).

(c) *Response to Jurisdictional Statement.* [An appellee *or* A respondent] may file a response to the [appellant's *or* petitioner's] statement of jurisdiction challenging the exercise of direct appeal jurisdiction, [or a waiver of response] within \_\_\_\_ days after the jurisdictional statement is filed with the Clerk of the Supreme Court. [If no response is timely filed or a party files a waiver of response, the Court will consider the jurisdictional statement without a response, but will not exercise jurisdiction before a response has been filed or requested by the Court.] (*added after 4/19 SCAC meeting.*) If filed, the response must conform to the form and contents of a response to a petition for review prescribed by Rule 53 and follow the length requirements of Rule 9.4.

~~[(d) *Exercise of Jurisdiction: Discretionary Review.* The Supreme Court may not take jurisdiction of any question of fact. The Supreme Court may decline to exercise jurisdiction over a direct appeal of an interlocutory order [granting or denying a temporary injunction] if the record is not adequately developed, or if its~~

~~decision would be advisory, or if the case is not of such importance to the jurisprudence of the state that direct appeal should be allowed.]~~

### **57.3 *Preliminary Ruling on Jurisdiction; Dismissal of Appeal.***

The Supreme Court may determine whether the Court has probable jurisdiction based on the statement of jurisdiction and any response and without first ordering the parties to obtain the appellate record. If the Supreme Court determines that it does not have jurisdiction ~~[or that a direct appeal should not be allowed as a matter of judicial discretion]~~, it will dismiss the appeal.

### **57.4 *The Appellate Record. (redrafted after 4/19 SCAC meeting)***

*(a) Preparation and Filing of Record.* The parties should not file the clerk's record or the reporter's record until the Supreme Court directs them to do so. If the Supreme Court determines that it has [probable jurisdiction], or that the Court needs the record to determine whether it has jurisdiction, the Supreme Court clerk will send written notice:

- (1) of the Supreme Court's decision to all parties to the proceeding;
- (2) directing [the appellant *or* the parties] to request the preparation and filing of the clerk's record and, if necessary to the appeal, preparation of the reporter's record under Rules 34 and 35, within \_\_\_\_ days after the date written notice was sent to the parties; and
- (3) of the date on which the record must be filed in the Supreme Court to the trial court clerk and the court reporter or court reporters responsible for preparing and filing the record.

*(b) Review of Appellate Record by Clerk.* On receipt of the record, the clerk of the Supreme Court must notify the parties of the date or dates of receipt and filing of the appellate record in the Supreme Court. The clerk of the Supreme Court must then determine whether the record complies with the Supreme Court's order on preparation of the record. If it is defective, the clerk must specify the defects

and instruct the responsible official or officials to correct the defects and return the record to the Supreme Court for filing by a specified date.

### ***57.5 Determination of Direct Appeal.***

(a) *Ruling on Merits.* If the Supreme Court determines that it has [probable] jurisdiction ~~[and that a direct appeal should be allowed as a matter of judicial discretion]~~, the Court:

- (1) may [or must] request full briefing under Rule 55;
- (2) may set the case for submission under Rule 59; and
- (3) will render judgment under Rule 60. (redrafted after 4/19 SCAC meeting)

(b) *Rehearing.* Any party may file a motion for rehearing within 15 days after the final order is rendered. The motion must clearly state the points or issues relied on for rehearing.

***57.6 Direct Appeal Exclusive While Pending.*** If a direct appeal to the Supreme Court is filed, the parties to the appeal must not, while the appeal is pending, pursue an appeal to the court of appeals. [If the direct appeal is dismissed, any party may pursue any other appeal available at the time when the direct appeal was filed. The other appeal may be perfected within \_\_\_\_ days after dismissal of the direct appeal.]

***57.7 Temporary Orders Pending Direct Appeal.*** (added after 4/19 SCAC meeting). During the pendency of a direct appeal to the Supreme Court. A party may seek review of a trial court's order concerning suspension of enforcement of the trial court's judgment or interlocutory order by petition for writ of mandamus in the Supreme Court.