

GIBSON DUNN

Appellate and Constitutional Law Update

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Texas Supreme Court Overhauls Procedures for Granting Review

The Texas Supreme Court recently adopted far-reaching changes to its procedures for granting review. Below is an overview of those changes and their likely effect on Texas business litigation.

The Texas Supreme Court recently adopted extensive amendments to the Texas Rules of Appellate Procedure, which govern the Court's procedures for granting discretionary review. Among other changes, the Court generally eliminated its practice of requesting merits briefs before deciding whether to grant review of a case. Going forward, the Court will ordinarily decide whether to grant review, request merits briefs, and schedule oral argument based on the petition-stage briefing alone. This combined determination now requires a minimum of four votes, whereas merits briefing previously required only three. The Court's new procedures—which apply to petitions filed after January 1, 2026—align more closely with the U.S. Supreme Court's certiorari practice.

Old Process: petition-stage briefing → merits briefing → grant or deny → oral argument

New Process: petition-stage briefing → grant or deny → merits briefing and oral argument

The practical effect of these amendments is substantial. For companies with litigation in Texas, the new rules may significantly alter appellate strategy and timing, particularly in high-stakes commercial, tort, regulatory, and employment matters.

The Petition for Review Becomes the Decisive Filing

Under the amended rules, the Court will nearly always decide whether to grant review based on the petition-stage briefing alone. This marks a significant departure from the Court's prior practice of requesting merits briefs before deciding whether to grant a petition for review in the mine run of cases.

To accommodate this change, the Court has expanded the length of the petition. The amended rules increase the word limit from 4500 to 6500 and stress the need for an introduction of up to 1000 words summarizing the reasons the Court should grant review and why the petitioner should prevail.

To avoid improvident grants, the amended rules emphasize the importance of error preservation by requiring that the issues presented must include record citations indicating where each issue was preserved for appellate review. The rules also eliminate the practice of "unbriefed" issues—so parties must now fully brief every issue presented for review in the petition itself.

As a result of these changes, petitions for review will carry far greater weight than in the past. Weak petitions can no longer be rehabilitated by merits briefing. Petitions must garner the votes of four Justices to avoid denial. And petitions can secure review before the submission of merits briefs—allowing those briefs to focus on the merits rather than rehashing issues related to review. These changes put a premium on early strategic focus in Texas Supreme Court litigation.

Streamlined Initial Review

To expedite the decision-making process, the Court has streamlined its internal review procedures. Petitions will now be circulated to the Justices on the first Tuesday after filing—instead of waiting up to 30 days for the filing of a response or waiver. After circulation, the Justices will have four weeks to review the petition and cast an initial vote to deny, request a response, or flag the case for conference discussion. If a petition fails to garner any votes during that four-week period, it will be denied on the following Friday's orders list. If a Justice votes to request a response, that order will issue immediately, and the case will proceed to the Court's conference agenda once the petition-stage briefing is complete. These amendments reduce administrative lag by ensuring that petitions are either dismissed or advanced to conference expeditiously.

Responses Become a New Strategic Firewall

Responses to petitions take on greater significance under the amended rules as well. Because the Court will no longer consider merits briefing before deciding whether to grant or deny review, responses must persuasively explain why the case is unworthy of the Court's review. Waiting for merits briefing to highlight jurisdictional defects, vehicle problems, or preservation issues is no longer a viable option. As it did for petitions, the Court expanded the word limit for responses from 4500 to 6500 words and emphasized the importance of an introduction of up to 1000 words.

Changes to Merits Briefing Timeline and Oral Argument Settings

In addition to revising the petition-stage process, the Court has implemented important changes to the merits-briefing process.

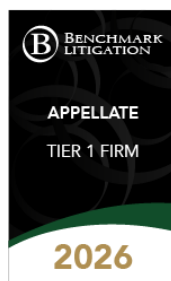
Most notably, the Court has indicated that it may begin setting cases for argument at the same time it grants review and orders merits briefing. To keep things moving and ensure the Justices have enough time to review the briefs before argument, the Court has indicated that although it will continue to be generous in granting parties one 30-day extension to file a merits brief, it will deny extension requests that push the reply brief deadline into the two-week window preceding oral argument. The Court also extended the response-brief deadline to 30 days after the opening brief is filed. The reply brief remains due 15 days after the response brief is filed.

With merits briefing now typically coming after a decision to grant review, the parties can focus on the merits rather than rehashing whether review is warranted in the first place.

What It Means

- The petition is now even more important than in the past, so parties seeking review must fully develop, refine, and streamline their arguments even earlier in the process. The Court's focus on error preservation means it's now more critical than ever to begin integrating appellate strategy in the trial court and on intermediate appeal.
- The Court's emphasis on introductions further underscores the importance of developing themes and strategies that will resonate with the Justices—and places an even higher premium on clear, concise writing.
- Instead of simply serving as a speedbump on the way to merits briefing, responses will now serve as a meaningful opportunity to stop a case in its tracks. A party receiving a call for a response must prioritize developing comprehensive, concise, and substantively compelling arguments that make clear review isn't warranted.
- Many cases can and will be resolved without the time and expense of merits briefs—with marginal cases less likely to make it to merits briefing.
- Parties will need to be prepared to mobilize quickly after a grant, ensuring counsel, internal stakeholders, and messaging are all aligned early.

Gibson Dunn Appellate Honors



The Court's order approving and summarizing the amendments is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Texas Supreme Court. Please feel free to contact the following practice group leaders:

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