

**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

*To ensure that all appropriate state and federal courts, officials, and parties shall have an adequate opportunity to review and resolve legal and factual issues concerning an impending execution, the Court of Criminal Appeals has adopted Miscellaneous Rule 08-101, effective Monday, June 23, 2008. This rule is modeled upon an analogous rule adopted by the Fifth Circuit Court of Appeals.*

SIGNED AND ENTERED this 23<sup>rd</sup> day of June, 2008.

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Sharon Keller, Presiding Judge

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Lawrence E. Meyers, Judge

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Tom Price, Judge

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Paul Womack, Judge

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Cheryl Johnson, Judge

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Michael Keasler, Judge

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Barbara Hervey, Judge

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Charles Holcomb, Judge

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Cathy Cochran, Judge

MISCELLANEOUS RULE 08-101

**Procedures in Death Penalty Cases Involving Requests for Stay of Execution and Related Filings in Texas State Trial Courts and the Court of Criminal Appeals**

1. *Time Requirements for Habeas Petitions or Other Motions.* Inmates sentenced to death who seek a stay of execution or who wish to file a subsequent writ application or other motion seeking any affirmative relief from, or relating to, a death sentence must exercise reasonable diligence in timely filing such requests. A motion for stay of execution, or any other motion relating to a death sentence, shall be deemed untimely if it is filed less than forty-eight hours before 6:00 p.m. on the scheduled execution date. Thus, a request for a stay of execution filed at 7:00 p.m. on a Monday evening when an execution is scheduled on Wednesday at 6:00 p.m. is untimely.

2. *Special Requirements for Untimely Petitions or Other Motions.* Counsel who seek to file an untimely motion for a stay of execution or who wish to file any other untimely motion requesting affirmative relief in an impending execution case, must attach to the proposed filing a detailed explanation stating under oath, subject to the penalties of perjury, the reason for the delay and why counsel found it physically, legally, or factually impossible to file a timely request or motion. Counsel is required to show good cause for the untimely filing.

3. *Sanctions.* Counsel who fails to attach a sworn detailed explanation to an untimely filing or who fails to adequately justify the necessity for an untimely filing shall be sanctioned. Such sanctions include, but are not limited to, (1) referral to the Chief Disciplinary Counsel of the State Bar of Texas; (2) contempt of court; (3) removal from the list of Tex. Code Crim. Proc. Art. 11.071 list of attorneys; (4) restitution of costs incurred by the opposing party; (5) any other sanction allowable under Tex. R. Civ. P. 215.2.