

How to Seek Permissive Interlocutory Appeals in State Court

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PRACTICES Appellate

The state system for obtaining permissive interlocutory appeals now closely resembles the procedure governing federal interlocutory appeals. The Texas procedure has evolved so that no longer must opposing parties agree to such an appeal before it can proceed. In addition, the amended statute now imposes a "two-tiered system of gate keeping," under which both the trial court and the appellate court must authorize the appeal. Previously, only the trial judge had to authorize the appeal. The requirements, which apply to any action filed on or after September 1, 2011,⁵ constitute the third amendment of the permissive appeal procedures in little over a decade. Few state appellate courts have considered permissive appeals. This article details the new permissive appeal procedures and offers suggestions for drafting a successful permissive appeal petition, including how federal cases apply similar provisions.

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