

# The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

## **Is Texas Going Federal? Statutory Changes Erode The Distinctiveness of Texas Practice**

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The Texas legislature has recently passed civil justice reform legislation. While most of the publicity concerning the legislation focused on the “loser pays” provisions, other changes also deserve note.

The new statutes permit an interlocutory appeal of a ruling on a controlling legal issue where such an appeal is approved by the trial court and accepted by the appellate court. The procedure is essentially the same as in federal cases. Texas previously allowed such interlocutory appeals only where all the parties agreed to appellate jurisdiction. This greatly limited the number and effectiveness of interlocutory appeals.

The legislature also directed the Texas Supreme Court to enact rules to implement a motion-to-dismiss practice. Until now, Texas did not have an efficient mechanism for attacking substantive deficiencies in the pleading. Apparently, the legislature contemplates a procedure similar to Federal Rule of Civil Procedure 12. The introduction of the motion to dismiss practice represents a radical departure for Texas practice.

These changes continue a trend in Texas law. Texas law is increasingly becoming “federalized.” The features that make Texas law “unique” or “quirky” or “loco” (depending on one’s perspective) are gradually being eliminated.