CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

January 22, 2003

The Honorable Thomas R. Phillips
Chief Justice
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Dear Justice Phillips:

The intent of this letter is to seek temporary relief from the restrictions of Rules 14b and 209, Texas Rules of Civil Procedure. The rules state the District Clerk cannot dispose of exhibits and depositions in a civil case unless the attorneys in the case receive individual notice of the intent to destroy these documents from the District Clerk. This process is extraordinarily cumbersome, expensive and ineffective, especially in a county the size of Harris County.

The District Clerk of Harris County maintains the case records for 15 County Criminal Courts at Law, 59 District Courts and 3 Region IV-D Courts. We receive approximately 150,000 new case filings annually. We have an estimated 3.5 million case files, 106, 500 civil exhibits and 19,100 civil depositions currently in inventory. The exhibits range from enlarged charts, texts and photographs to 55-gallon drums, automobile parts, torn clothing, etc. Within one year of case disposition, these records become obsolete - not accessed by the public.

In 1991, due to dwindling records storage space, the Harris County District Clerk requested and received signed orders from the Supreme Court of Texas allowing for the destruction of certain exhibits and depositions by posting a notice in the Texas Bar Journal. The records pertaining to those orders were destroyed. In 1997, this office contacted the Supreme Court of Texas regarding a possible rule change to allow for the systematic destruction of these records. We were told a Supreme Court Advisory Committee was formed to address the issue of the retention of court records – including case files, depositions and exhibits. Our expectation at that time was a rule change was to take place rather quickly as this appeared to be a common problem among all the larger Texas counties. Some 5 years later, we still do not have resolution to the on-going problem of storage of depositions and exhibits.

We are struggling with the lack of storage space. Maintaining obsolete records due to cumbersome destruction rules is neither economical nor operationally feasible. We have formulated a plan for consideration by the Supreme Court of Texas regarding the destruction of exhibits and depositions. We believe this plan meets the spirit of 14b and 209 while eliminating the cumbersome, expensive process of notification. If approved this process would remain in effect until official rule changes could be implemented.

The Harris County District Clerk is requesting the Supreme Court of Texas consider the attached orders to the letter – Relating to the Retention and Disposition of Exhibits By the District Clerk of Harris County (Rule 14b) and Relating to the Retention and Disposition of Depositions By the District Clerk of Harris County. These orders give the Harris County District Clerk permission to dispose of all exhibits and depositions submitted in any case:

- one year after judgment in the case has been rendered, and in which no motion for new trial was filed within two years after judgment was signed or
- in which judgment was signed, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

Notification to the attorneys of the intent to destroy the records (exhibits and depositions) would be made through publication in the Texas Bar Journal. The District Clerk of Harris County would dispose of all exhibits and depositions beginning in the third month after the month in which notice of the Clerk's intention to do so is published in the Texas Bar Journal. Attorneys desiring to withdraw exhibits must do so by a published date.

Your timely consideration of this matter would be greatly appreciated.

Sincerely,

CHARLES BACARISSE
District Clerk

CEB/dkr
Enclosures

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. _____

RELATING TO THE RETENTION AND DISPOSITION OF EXHIBITS BY THE DISTRICT CLERK OF HARRIS COUNTY

ORDERED:

Pursuant to Rule 14b, Texas Rules of Civil Procedure, exhibits shall be retained by the District Clerk of Harris County as required by law, unless disposed of as allowed by this Order or this Court's general Order effective January 1, 1988, a copy of which is attached.

In any case—

(1) in which one year has passed since judgment in the case was rendered and no motion for new trial was filed within two years after the judgment was signed, or

(2) in which a judgment was signed, and no appeal was perfected or a perfected appeal was dismissed, or an appellate court has issued a final judgment as to all parties and the case is no longer pending on appeal or in the trial court.

the District Clerk of Harris County may dispose of all exhibits beginning in the third month after the month in which notice of the Clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except those materials which, prior to disposition, are withdrawn.

SIGNED AND ENTERED this _____ day of _____, 2003.

_____
Thomas R. Phillips, Chief Justice

_____
Nathan L. Hecht, Justice

_____
Craig T. Enoch, Justice

_____
Priscilla R. Owen, Justice

_____
Harriet O'Neill, Justice

_____
Wallace Jefferson, Justice

_____
Michael Schneider, Justice

_____
Steven W. Smith, Justice

_____
Dale Wainwright, Justice

RULE 13. RETENTION AND DISPOSITION OF COURT RECORDS

13.1 Applicability. Except as otherwise provided by law, this rule governs the retention and disposition of court records by the clerk of the court in which the record is filed and maintained.

13.2 Retention Period. The clerk of the court in which the following categories of court records are filed and maintained must retain the records, under any method or medium permitted by law, for not less than the time periods set forth below:

(a) ***Generally.***

(1) *Citation.* Until four years after the date of final judgment.

(2) *Judgments and court orders.* Permanently.

(3) *Pleadings (petitions and answers).* Until 20 years after the date of final judgment.

(4) *Motions.* Until 20 years after the date of final judgment.

(5) *Discovery requests and responses.* Until one year after date of final judgment.

(6) *Oral deposition transcripts and depositions upon written questions.* Until one year after date of final judgment.

(7) *Exhibits offered and admitted into evidence.* Until one year after date of final judgment.

(b) ***Exceptions.***

(1) *Cases where no final judgment rendered.* In cases that are dismissed without a final judgment being rendered, the retention periods specified in subparagraph (a) run

from the date of dismissal.

(2) *Cases involving minors.* In cases involving minors, the retention periods specified in subparagraph (a) run from the date the minor reaches the age of majority.

(3) *Court order.* The court in which a particular record is filed and maintained may order the clerk to retain it for a period of time longer than retention periods specified in subparagraph (a). In so ordering, the court may consider, among other factors:

(A) The potential historical significance of the court paper;

(B) Other interests of the public in assuring and maintaining access to the court paper;

(C) The costs of storing and maintaining the court paper or other similar papers; and

(D) The availability of the same or equivalent information through other court papers or other sources.

(4) *Service by publication.* If any defendant in a case was served by publication, the retention period specified in subparagraphs (a)(6) and (7) must be extended by one year.

13.3 Duties of Clerk During Retention Period; Disposal; Withdrawal.

(a) ***Generally.*** During the retention period, the clerk must make the court records listed in Rule 13.2 available for inspection and copying as provided by law.

(b) ***Disposal.***

(1) *Exhibits and deposition transcripts.* The clerk may, without further notice, dispose of exhibits and oral or written deposition transcripts after thirty days following the end of the applicable retention period, except as provided in paragraph (c).

(2) *Other types of court records.* The clerk may, without further notice, dispose of other types of court records listed in Rule 13.2(a) after the applicable retention period has expired.

(c) ***Procedures for withdrawing exhibits and depositions.***

(1) *Time to withdraw.* After the end of the applicable retention period but within thirty days after that date, a party may request the clerk to withdraw an exhibit or oral or written deposition transcript.

(2) *Withdrawal.*

(A) Generally. If a party timely requests to withdraw an exhibit or deposition transcript, the clerk must tender the exhibit or transcript to the requesting party on the thirtieth day following the end of the applicable retention period.

(B) Multiple requests. If more than one party timely requests to withdraw an exhibit or transcript, the clerk must provide copies of the exhibit or transcript to all requesting parties and prorate the cost among all the parties or persons requesting the document.

(C) Exhibit not capable of reproduction. If an exhibit is not a

document or otherwise cannot be copied, the party claiming the exhibit must provide a photograph of the exhibit upon request and payment of the reasonable cost thereof by the requesting party.

(3) *Additional time before disposal.* If a party has timely requested to withdraw an exhibit or deposition transcript or exhibit under subparagraph (2), the clerk must retain the exhibit or transcript for an additional three business days and, if not completed by that time, until the clerk has provided any copies of exhibits or transcripts the clerk is required to provide under subparagraph (2).

Effective February 1, 1992

Texas State Library and Archives Commission

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL SCHEDULE LC

RETENTION SCHEDULE FOR RECORDS OF JUSTICE AND MUNICIPAL COURTS

This schedule establishes mandatory minimum retention periods for the records listed. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period for a record that is less than that established for the record on this schedule. The originals of records listed in this schedule may be disposed of prior to the expiration of the stated minimum retention period if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under authority of those chapters. Actual disposal of such records by a local government or an elective county office is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under its authority, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Open Records Act (Government Code, Chapter 552).

INTRODUCTION

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Local Schedule LC sets mandatory minimum retention periods for records series (identified in the Records Series Title column) that are usually found in justice and/or municipal courts. If the retention period for a record is established in a federal or state law, rule of court, or regulation, a citation to the relevant provision is given; if no citation is given, the authority for the retention period is this schedule.

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in this schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in this schedule must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period, again unless otherwise noted, applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

If a record described in this schedule is maintained in a bound volume of a type in which pages are not designed to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is *less than permanent* may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is *permanent* on this schedule, authority to dispose of the damaged record must be obtained from the director and librarian of the Texas State Library. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Requests for Authority to Destroy Unscheduled Records (SLR 501), whose submission to the director and librarian of the Texas State Library is required by the Local Government Code, Section 203.045, need not be filed for records shown as exempt from the requirement.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described. Although AV may be used as a retention period on a records control schedule of a local government, it is in the best interests of any records management program that fixed retention periods be assigned for each records series. AV records tend to accumulate and go unmanaged.

ABBREVIATIONS USED IN THIS SCHEDULE

AV - As long as administratively valuable
FE - Fiscal year end

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RECORDS OF JUSTICE AND MUNICIPAL COURTS

***Retention Note**: Notwithstanding any retention periods set in this schedule, all case papers, dockets, or other records of a municipal or justice court dated 1876 or earlier **must** be retained permanently. This schedule also recommends, **but does not require**, that criminal dockets dated from 1877 to 1920 be retained permanently for historical reasons.*

PART 1: CIVIL AND CRIMINAL RECORDS

2350-01 **APPEAL OR TRANSFER RECORD** - Record or register of cases appealed from a court and/or records of case transfers as a result of an examining trial. RETENTION: AV. (Exempt from destruction request requirement)

2350-02 **BAIL BOND RECORDS** - Ledgers or books recording the setting or taking by the court of bail or recognizance bonds. RETENTION: 3 years.

2350-03 **CASE PAPERS** (including documentation maintained by a court arising from the actions of its judge as a magistrate)

a) Administrative hearing case papers. RETENTION: 1 year after judgment rendered or proceedings terminated. (Exempt from destruction request requirement)

b) Civil case papers (including small claims and scire facias). RETENTION: 10 years after case closed.

***Retention Note**: Case papers of cases dismissed for want of prosecution, on motion of the plaintiff, or for other reasons within the power of the court need only be retained for 4 years from the date the case was originally filed.*

c) Criminal case papers (including traffic offenses and violations of municipal ordinances) *except*: RETENTION: 5 years from date of offense.

1) Papers in cases dismissed for want of prosecution or for other reasons within power of the court. RETENTION: 5 years from date of offense.

2) Unserved arrest warrants for misdemeanors within jurisdiction of the court. RETENTION: 4 years after issuance.

***Retention Note:** Prior to the purging and disposal of any unserved arrest warrants under this item number, the warrants must be dismissed by the judge in a manner permitted by law. If a judge dismisses unserved warrants at any time prior to 4 years after issuance, they still must be retained until the expiration of the retention period.*

3) Parking or pedestrian violation tickets that have been cleared by payment, dismissal, or other action. RETENTION: 6 months. (Exempt from destruction request requirement, unless the tickets must be retained for FE + 3 years)

***Retention Note:** It is an exception to the 6-month retention period that if the tickets are used as vouchers for direct posting to receipt journals or ledgers, the tickets must be retained for FE + 3 years.*

d) Examining trial case papers. RETENTION: AV. (Exempt from destruction request requirement)

***Retention Note**: If copies of statutory warnings are maintained only as carbons in bound volumes, the volumes must be retained for 5 years after last entry.*

2350-04 **DOCKETS AND DOCKET SHEETS**

Retention Notes: *a) The retention periods in this record group also apply to docket sheets or the record equivalent in purpose to a docket in those courts that do not maintain dockets in bound volumes.*

b) If any docket listed under (a)-(f) contains records of inquests, it must be retained permanently.

a) Civil docket (including small claims and scire facias). RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

b) Criminal docket (including traffic offenses and violations of municipal ordinances). RETENTION: 5 years.

c) Civil and criminal docket (recording cases of both types in one volume). RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

d) Administrative hearing docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

e) Execution docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

f) Examining trial dockets. RETENTION: 5 years.

g) Call dockets or docket sheets or any other working copy or preliminary version of a docket or docket sheet for the use of clerks, bailiffs, or judges before entry of the information into any of the dockets noted under (a)-(f). RETENTION: AV after entry of information into court docket. (Exempt from destruction request requirement)

2350-05 **FEE BOOKS** - Books or ledgers detailing fees or costs accrued in cases heard by the court and status of payment or waiver of costs or fees, if maintained separately from dockets. RETENTION: FE + 5 years.

2350-06 **JURY RECORDS**

a) Jury venire lists. RETENTION: 1 year. (Exempt from destruction request requirement)

b) Juror information and reply forms. RETENTION: 1 year. (Exempt from destruction request requirement)

2350-07 **PROCESS LOGS/ PROCESS REGISTERS** - Stub books, carbon books, logs, or registers listing warrants, subpoenas, summonses, or citations issued by or under the authority of the court. RETENTION: 5 years.

2350-08 **REPORTS TO STATE AGENCIES**

a) Statistical reports to the Texas Judicial Council. RETENTION: 3 years.

b) Reports of motor carrier convictions (State Comptroller Form 40-109 or equivalent). RETENTION: AV. (Exempt from destruction request requirement)

c) Traffic conviction abstracts and reports of death arising from traffic accidents submitted to the Texas Department of Public Safety. RETENTION: AV. (Exempt from destruction request requirement)

2350-09 **WITNESS RECORD** - Register of witnesses subpoenaed, attached, or recognized in criminal cases, if maintained separately from the criminal dockets. RETENTION: 5 years.

PART 2: INQUEST RECORDS

2375-01 **FIRE INQUEST RECORDS**

a) Case papers. RETENTION: AV. (Exempt from destruction request requirement)

b) Docket or record. RETENTION: PERMANENT.

2375-02 **INQUEST RECORDS**

a) Case papers.

1) Arising from inquests or inquest hearings initiated August 31, 1987 or earlier. RETENTION: Destroy at option. (Exempt from destruction request requirement)

2) Arising from inquests or inquest hearings initiated September 1, 1987 and after. RETENTION: PERMANENT. [By law - Code of Criminal Procedure, art. 49.15(b).]

***Retention Note**: Prior to September 1, 1987 case papers arising from an inquest were forwarded by the justice to the district clerk. Since that date case papers are retained and become a part of the inquest docket or record and only an inquest summary report is forwarded. The only case papers retained by a justice of the peace or other magistrate before September 1, 1987 are likely to be copies of materials forwarded. Creation and retention of copies was not required by law.*

b) Docket or record. RETENTION: PERMANENT. [By law - Code of Criminal Procedure, art. 49.15(b).]

PART 3: VITAL STATISTICS RECORDS

***Retention Notes**: a) Since 1927, each justice of the peace precinct serves as a primary registration district for the registry of births and deaths, unless, by agreement, the county clerk assumes primary registration duties. The records in this section arise from the duties of justice of the peace as a local registrar.*

b) This section applies to and is binding upon city clerks or secretaries who serve as local registrars of vital statistics.

2400-01 **BIRTH AND DEATH RECORD** (combination of the Birth Record and Death Record). RETENTION: PERMANENT. [By law - Health and Safety Code, Section 191.026.]

2400-02 **BIRTH RECORD (REGISTER OF BIRTHS)** - Recorded or bound duplicate copies of birth certificates, delayed birth certificates, or amended birth certificates. RETENTION: PERMANENT. [By law - Health and Safety Code, Section 191.026.]

2400-03 **BURIAL TRANSIT PERMIT RECORDS** - Stubs, copies, or lists of burial transit permits issued. RETENTION: 2 years.

2400-04 **DEATH RECORD (REGISTER OF DEATHS)** - Recorded or bound duplicate copies of death certificates, fetal death certificates, or amended death certificates. RETENTION: PERMANENT. [By law - ~~H~~ealth and Safety Code, Section 191.026.]

2400-05 **DISINTERMENT RECORD**

a) Copies of disinterment permits. RETENTION: PERMANENT.

b) Applications for permits. RETENTION: 2 years.

2400-06 **NOTIFICATIONS OF DEATH OF PERSONS UNDER 55** - Abstracts, transcripts, or copies of death certificates from the Bureau of Vital Statistics of persons under age 55 (or under 18 prior to May 1987), whose birth certificates are recorded in an office of a local registrar. RETENTION: Until notation made in Birth Record. (Exempt from destruction request requirement)

2400-07 **REPORTS OF DEATH** - Reports of death filed by funeral directors or persons acting as such. RETENTION: Until receipt of death certificate. (Exempt from destruction request requirement)

PART 4: MISCELLANEOUS RECORDS

***Retention Note**: For financial, personnel, or administrative records of a justice or municipal court not listed in this section see Local Schedule GR.*

2425-01 **ACKNOWLEDGMENT RECORD** - Record of acknowledgments or proofs of instruments taken by justices of the peace. RETENTION: 10 years.

2425-02 **COST DEPOSIT RECORDS** - Journal, ledger, or similar records detailing receipts to and disbursements from monies deposited to cover costs in civil proceedings. RETENTION: FE + 5 years.

Effective October 20, 1997

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL SCHEDULE CC (2nd Edition)

RETENTION SCHEDULE FOR RECORDS OF COUNTY CLERKS

This schedule establishes mandatory minimum retention periods for the records listed. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period for a record that is less than that established for the record on this schedule. The originals of records listed in this schedule may be disposed of prior to the expiration of the stated minimum retention period if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under authority of those chapters. Actual disposal of such records by a local government or an elective county office is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under its authority, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Open Records Act (Government Code, Chapter 552).

INTRODUCTION

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Local Schedule CC sets mandatory minimum retention periods for records series (identified in the Records Series Title column) maintained by county clerks. It also sets retention periods for the records of county surveyors, maintained by law by county clerks in those counties in which the office has been abolished, and for the records of defunct offices of county superintendents of schools, which are customarily maintained by county clerks. If the retention period for a record is established in a federal or state law, rule of court, or regulation, a citation to the relevant provision is given; if no citation is given, the authority for the retention period is this schedule.

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in this schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in this

schedule must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period, again unless otherwise noted, applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

If a record described in this schedule is maintained in a bound volume of a type in which pages are not designed to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is *less than permanent* may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is *permanent* on this schedule, authority to dispose of the damaged record must be obtained from the director and librarian of the Texas State Library. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Requests for Authority to Destroy Unscheduled Records (SLR 501), whose submission to the director and librarian of the Texas State Library is required by the Local Government Code, Section 203.045, need not be filed for records shown as exempt from the requirement.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described. Although AV may be used as a retention period on a records control schedule of a local government, it is in the best interests of any records management program that fixed retention periods be assigned for each records series. AV records tend to accumulate and go unmanaged.

AMENDMENT NOTICE

An item number that is preceded by an asterisk (*) indicates either that the retention period or the description of the record series has been changed from that which appeared in the edition of Local Schedule CC, effective November 1, 1994, or the records series is new to this schedule. An asterisk is also used before a retention note that has been amended or added at the beginning of the schedule or any of its parts or sections. Changes to legal citations or non-substantive editorial changes are not noted.

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ABBREVIATIONS USED IN THIS SCHEDULE

AR - After release, replacement, termination, or cancellation of the instrument; or if recorded, of all instruments in volume
AV - As long as administratively valuable
FE - Fiscal year end
US - Until superseded

RECORDS OF COUNTY CLERKS

Retention Notes: *a) TEXAS COUNTY RECORDS MANUAL RENDERED WITHOUT EFFECT - The adoption and issuance of the first edition of this schedule by the Texas State Library and Archives Commission rendered without effect Volume I of the Texas County Records Manual as amended through February 15, 1993. County clerks should not use any part of the Texas County Records Manual to determine minimum retention periods or the requirements of local government records laws.*

b) USE OF LOCAL SCHEDULE GR (Records Common to All Governments) - Class 1000 (General Records), which was part of Volume I of the Texas County Records Manual, is not included in this schedule. County clerks should use Local Schedule GR for determining minimum retention periods for administrative, personnel, financial, and support service records not included in this schedule.

c) DESTROY AT OPTION - The term "destroy at option" as used throughout this schedule indicates that the record is an obsolete record no longer required by law to be maintained by county clerks. We recommend that county clerks who wish to retain these records rather than destroy them assign definite retention periods for the records on their records control schedules.

PART 1: COUNTY CLERK AS CLERK TO COMMISSIONERS COURT

SECTION 1-1: RECORDS OF PROCEEDINGS

1100-01 **BOARD OF EQUALIZATION MINUTES** - Proceedings of commissioners court sitting as a board of equalization. RETENTION: PERMANENT.

1100-01a **COMMISSIONERS COURT AGENDAS AND OPEN MEETING NOTICES.** RETENTION: 2 years. [By law - Government Code, Section 551.104(a) for agendas of closed meetings.]

1100-02 **COMMISSIONERS COURT DOCKET** - Register of petitions, applications, and claims filed.

a) If information *is* duplicated in Commissioners Court Minutes [1100-03]. RETENTION: 5 years after last entry.

b) If information *is not* duplicated in Commissioners Court Minutes [1100-03]. RETENTION: PERMANENT.

1100-03 **COMMISSIONERS COURT MINUTES**. RETENTION: PERMANENT.

1100-04 **COMMISSIONERS COURT MINUTES (AUDIO AND VIDEOTAPES)**

a) Audio or videotapes of proceedings in open meetings:

1) Audiotapes from which written minutes *are* prepared. RETENTION: 90 days after approval of the minutes by the commissioners court. (Exempt from destruction request to the Texas State Library)

2) Audiotapes from which written minutes *are not* prepared. RETENTION: PERMANENT.

b) Audiotapes of closed meetings. RETENTION: 2 years. [By law - Government Code, Section 551.104(a).]

c) Audiotapes of workshop sessions in which votes are not made and written minutes are not required by law to be taken. RETENTION: 2 years.

1100-05 **COMMISSIONERS COURT MINUTES (NOTES)** - Notes taken during meetings to aid in the preparation of minutes. RETENTION: 90 days after approval of the minutes by the commissioners court. (Exempt from destruction request to the Texas State Library)

1100-06 **COMMISSIONERS COURT ORDERS AND RESOLUTIONS**

a) If recorded in Commissioners Court Minutes or in a separate volume of proceedings [1100-03]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) If *not* recorded in Commissioners Court Minutes or in a separate volume of proceedings [1100-03]. RETENTION: PERMANENT.

1100-07 **COMMISSIONERS COURT, PETITIONS TO.** RETENTION: 2 years after consideration by the court. (Review before disposal; some petitions relating to significant events in a county may have historical value. This schedule recommends, but does not require, that such original petitions that have not been recorded in one of the permanent records listed in this section be retained PERMANENTLY.)

1100-08 **HOSPITAL DISTRICT BOARD MINUTES** - Proceedings of commissioners court sitting as a board of managers of a county hospital district. RETENTION: PERMANENT.

1100-09 **TEMPORARY BOARD AND COMMISSION MINUTES** - Proceedings of temporary boards or commissions appointed by commissioners court. RETENTION: PERMANENT.

1100-10 **COMMISSIONERS COURT SUPPORTING DOCUMENTATION** - One copy of each document *of any type* submitted to a meeting of commissioners court for consideration, approval, or other action, *if* such action is reflected in the minutes of a meeting. RETENTION: 2 years. (Review before disposal; some supporting documentation, not already required to be maintained permanently elsewhere in this or other commission schedules, may merit permanent retention for historical reasons.)

Retention Note: *The retention periods for many of the documents submitted to commissioners court for action are established elsewhere in this or other commission schedules and are often longer than the 2-year retention period for supporting documentation set here. The 2-year retention requirement does not override a longer retention requirement set elsewhere, but rather is meant to ensure that* ***all*** *documents presented for action by commissioners court are retained at least two years. This schedule does not require that supporting documentation be maintained together, but the retention by a county clerk of one set of the documents submitted at each meeting for two years would ensure satisfaction of the minimum retention requirement. County clerks should exercise caution in disposing of supporting documentation to avoid destruction of the record copy of a document for which they are custodian before the expiration of its retention period.*

SECTION 1-2: FINANCIAL RECORDS

1125-01 **ACCOUNT OF OCCUPATION TAX RECEIPTS** - Statements of account from the State Comptroller to commissioners court showing amount of occupation taxes collected by the county. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1125-02 **ANNUAL FEE REPORTS** - Annual statements of fees, costs, and commissions earned, collected, and owed by district, county, and precinct officers. RETENTION: FE + 3 years.

1125-03 **ANNUAL REPORTS OF SINKING FUNDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library.)

1125-04 **APPLICATIONS FOR DEPUTIES** - Applications by officials for the appointment of deputies and assistants. RETENTION: 1 year after appointment or denial of application. (Exempt from destruction request to the Texas State Library)

1125-05 **AUDITOR'S REPORTS**

a) Monthly or other partial year reports. RETENTION: FE + 3 years.

b) Annual reports. RETENTION: PERMANENT.

* 1125-06 **BANKING RECORDS** - Bank statements, canceled or digitized images of checks, check registers, deposit slips, debit and credit notices, reconciliations, notices of interest earned, etc. of a county clerk. RETENTION: FE + 5 years.

1125-07 **BIDS AND BID DOCUMENTATION** - Original bid documentation maintained by county clerks in counties without county auditors or county purchasing agents.

a) Requests for proposals and successful bids, including invitations to bid, bid bonds and affidavits, bid sheets, and similar supporting documentation. RETENTION: FE + 3 years.

> **** Retention Note:*** *If a formal written contract is the result of a request for proposal or successful bid, the request for proposal or successful bid and its supporting documentation must be retained for the same period as the contract. See item number 1125-12.*

b) Unsuccessful bids. RETENTION: 2 years.

c) Informal bid records, such as requests for quotations or estimates, for the procurement of goods or services for which state law or local policy does not require the formal letting of bids. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1125-08 **BOND REGISTERS**

a) If bond registers *are* duplicates of those maintained by the county treasurer or the county auditor. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

* b) If bond registers *are not* duplicates of those maintained by the county treasurer or the county auditor. RETENTION: FE of cancellation of last bond under issue + 5 years.

> ***Retention Note:*** *Prior to disposal, bond registers shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Older bond registers from a time when the government itself or a local bank handled the issuance and payment of bonds often contain the names of local residents who subscribed to the bond issue. These registers usually merit permanent retention for historical reasons.*

1125-09 **BONDS AND COUPONS** - Canceled or unsold bonds, bond interest paying coupons, and similar instruments of paid bonded indebtedness, including lists of bonds and coupons to be destroyed.

a) Any unsold and undelivered bonds that have been printed, but the authority to issue which has been revoked by an election. RETENTION: *See retention note.* [By law - Revised Civil Statutes, art. 717g(2).] (Exempt from destruction request to the Texas State Library)

> ***Retention Note:*** *Must be canceled and burned after canvass of election returns indicates revocation of the bond issue has been approved by the electorate.*

b) Canceled bonds or coupons in the possession of the county depository or another entity acting as paying agent for the bond issue. RETENTION: *See retention note.* [By law - Revised Civil Statutes, art. 717l-1.] (Exempt from destruction request to the Texas State Library)

> ***Retention Note:*** *Commissioners courts may enter into contract with a depository or other entity for destruction of bonds or coupons provided that a) 1 year has elapsed since the bond or coupon was paid; and b) 90 days have elapsed since the depository or other agent has filed with the commissioners court or the county treasurer a list identifying the certificate, bond, interest coupon, or other evidence of indebtedness to be destroyed. The list submitted by the depository or other agency must be retained for 1 year after the destruction of the bonds or coupons and is exempt from destruction request to the Texas State Library.*

c) Canceled bonds or coupons in the possession of a county clerk. RETENTION: 1 year after payment. (Exempt from destruction request to the Texas State Library)

1125-10 **CLAIMS** - Bills, invoices, and other claims requesting payment for goods or services rendered.

a) In counties without an auditor or in counties with an auditor in which the county clerk retains the original claims as clerk to the commissioners court. RETENTION: FE + 3 years.

b) In counties with an auditor in which the county clerk retains copies and the county auditor the original claims. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1125-11 **CONTRACT RECORD** - Recorded contracts, leases, or agreements entered into by the county. RETENTION: PERMANENT.

* 1125-12 **CONTRACTS, LEASES, AND AGREEMENTS** - Contracts, leases, and agreements entered into by the county, including reports, correspondence, performance bonds, and similar records relating to their negotiation, administration, renewal, or termination, *except* construction contracts. For construction contracts, see item number 1075-16 in Local Schedule GR (Records Common to All Local Governments). RETENTION: 4 years after the expiration or termination of the instrument according to its terms.

1125-13 **COUNTY BUDGETS** - Annual, supplemental, and special budgets, including amendments. RETENTION: PERMANENT.

1125-14 **COUNTY DEPOSITORY PLEDGE CONTRACTS** - Pledge contracts with banks acting as depositories for county or court trust funds, including any lists and amounts of securities pledged, notices of additional pledges, reconciliation papers, and similar documents relating to the contract. RETENTION: 4 years after the expiration or termination of the contract according to its terms.

1125-15 **DEPOSIT WARRANTS** - Copies or stub books of deposit warrants issued by the county clerk for monies deposited in county funds or accounts. RETENTION: FE + 3 years.

1125-16 **FINANCE LEDGER** - Record of credits to and debits from the various accounts and funds administered by county officials, maintained by county clerks in counties without county auditors.

* 1) Fiscal years for which an annual audit report (see item numbers 1125-05 and 1125-17) exists. RETENTION: FE + 5 years.

Retention Note: *Prior to disposal, finance ledgers shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently.*

2) Fiscal years for which an annual audit report (see item numbers 1125-05 and 1125-17) *does not* exist. RETENTION: PERMANENT.

1125-17 **INDEPENDENT AUDIT REPORTS** - Audit reports by an auditor other than the county auditor. RETENTION: PERMANENT.

1125-18 **MINUTES OF ACCOUNTS ALLOWED (CLAIM MINUTES).** RETENTION: PERMANENT.

1125-19 **MINUTES OF TREASURERS REPORT.** RETENTION: PERMANENT.

1125-20 **MONTHLY EXPENSE REPORTS** - Monthly statements by district, county, and precinct officers of expenses incurred. RETENTION: FE + 3 years.

1125-21 **PRISONER EXPENSE REPORTS** - Reports concerning expenses incurred for the safekeeping or maintenance of county prisoners. RETENTION: FE + 3 years.

* 1125-22 **PUBLIC HOSPITAL BOND RECORD** - Record of bonds issued by a public hospital district if, by law, the county clerk maintains the record. RETENTION: FE of cancellation of last bond under issue + 5 years.

> ***Retention Note:*** *Prior to disposal, bond records shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Older bond records from a time when the government itself or a local bank handled the issuance and payment of bonds often contain the names of local residents who subscribed to the bond issue. These bond records usually merit permanent retention for historical reasons.*

1125-23 **REPORTS OF COLLECTIONS** - Reports of collections submitted by district, county, and precinct officers. RETENTION: FE + 3 years.

1125-24 **TREASURER'S MONTHLY REPORTS.** RETENTION: FE + 3 years.

1125-25 **TREASURER'S QUARTERLY REPORTS.** RETENTION: FE + 3 years.

1125-26 **VITAL STATISTICS REPORTS** - Reports from the State Registrar certifying the number of birth, death, and fetal death certificates filed by each local registrar. RETENTION: FE + 3 years.

SECTION 1-3: ROAD RECORDS

1175-01 **DRAINAGE CONSTRUCTION REPORTS** - Reports on the construction of ditches and canals by private corporations. RETENTION: 5 years.

1175-02 **HIGHWAY FUND ANNUAL REPORTS** - Annual reports to the State Treasurer detailing how monies from county road funds were spent. RETENTION: PERMANENT.

1175-04 **JURY OF VIEW REPORTS** - Reports of juries of view appointed to oversee the laying out or alteration of county roads and ditches.

a) Originals of reports that *have been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) Originals of reports that *have not been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: PERMANENT.

1175-05 **ORDERS FOR APPOINTMENT OF JURIES OF VIEW.** RETENTION: Destroy at option after submission of report of jury of view. (Exempt from destruction request to the Texas State Library)

1175-06 **ROAD COMMISSIONERS REPORTS**

a) Originals of reports that *have been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) Originals of reports that *have not been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: PERMANENT.

1175-07 **ROAD CONSTRUCTION SURETY BONDS** - Surety bonds filed by owners of real estate subdivisions for the construction of streets and roads. RETENTION: Effective life of bond + 5 years.

* 1175-08 **ROAD DISTRICT BOND RECORD.** RETENTION: FE of cancellation of last bond under issue + 5 years.

Retention Note: *Prior to disposal, bond records shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Older bond records from a time when the government itself or a local bank handled the issuance and payment of bonds often contain the names of local residents who subscribed to the bond issue. These bond records usually merit permanent retention for historical reasons.*

1175-09 **ROAD MINUTES** - Proceedings of commissioners court relating to county roads and ditches.

a) Any volume containing minutes of proceedings and actions concerning road matters. RETENTION: PERMANENT.

b) Any volume containing recorded copies of road petitions; orders for juries of view; or reports of juries of view or road overseers, supervisors, or commissioners. RETENTION: PERMANENT.

c) Any volume containing only a record of appointments of or commissions issued to road overseers. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1175-10 **ROAD OVERSEERS ANNUAL REPORTS**

a) Originals of reports that *have been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Originals of reports that *have not been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: PERMANENT.

1175-11 **ROAD OVERSEERS COMMISSIONS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1175-12 **ROAD SUPERINTENDENTS REPORTS**

a) Originals of reports that *have been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) Originals of reports that *have not been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: PERMANENT.

1175-13 **ROAD SUPERVISORS REPORTS**

a) Originals of reports that *have been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) Originals of reports that *have not been* recorded in Commissioners Court Minutes [1100-03] or Road Minutes [1175-09]. RETENTION: PERMANENT.

1175-14 **STATE HIGHWAY BIDS** - Copies of bids submitted to the Texas Department of Transportation or its predecessors for construction or improvement of state highways. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1175-15 **SURVEY REPORTS** - Reports, including surveys, specifications, and cost estimates, submitted by surveyors or the county engineer to commissioners court on the construction or repair of county roads and bridges and county-owned drainage ditches.

a) Originals of reports and associated papers that have been recorded in Commissioners Court Minutes [1100-03], Road Minutes [1175-09], or Plat Record [1275-17]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

b) Originals of reports and associated papers that have *not* been recorded in Commissioners Court Minutes [1100-03], Road Minutes [1175-09], or Plat Record [1275-17]. RETENTION: PERMANENT.

SECTION 1-4: RECORDS OF WATER DISTRICTS

1200-01 **COMMISSIONERS COURT PROCEEDINGS CONCERNING WATER DISTRICTS** - Proceedings, findings, orders, and declarations of commissioners court or a joint board concerning drainage, fresh water supply, irrigation, levee improvement, navigation, self liquidating navigation, stormwater control, water control and improvement, water control and preservation, and water improvement districts. RETENTION: PERMANENT.

Retention Note: *Originals of any of these documents that have been recorded in Commissioners Court Minutes [1100-03] or in a separate volume of proceedings need only be kept as long as administratively valuable and are exempt from destruction request to the Texas State Library.*

1200-02 **DRAINAGE DISTRICT ANNUAL MAINTENANCE REPORTS.** RETENTION: PERMANENT.

1200-03 **DRAINAGE DISTRICT BOND AGREEMENTS** - Agreements between commissioners court and district bondholders for retirement of bonds of dissolved districts. RETENTION: Retirement of all bonds of district + 7 years.

1200-04 **DRAINAGE DISTRICT CIVIL ENGINEER REPORTS.** RETENTION: PERMANENT.

1200-05 **FRESH WATER SUPPLY DISTRICT BOARD RESOLUTIONS** - Copies of resolutions of district boards adding or excluding land from districts, redefining boundaries, or discharging liability of taxpayers in excluded territory.

a) Recorded copies. RETENTION: PERMANENT.

b) Filed copies. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

1200-06 **IRRIGATION DISTRICT CREATION AND DISSOLUTION ORDERS** - Filed and recorded copies of the orders of district boards creating or dissolving districts.

a) Recorded copies. RETENTION: PERMANENT.

b) Filed copies. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

1200-07 **IRRIGATION DISTRICTS, RECORDS OF DISSOLVED** - Records of dissolved irrigation districts. RETENTION: *See retention note.* [By law - Water Code, Section 58.828.]

Retention Note: *State law requires that a county clerk, after obtaining custody of the records of a dissolved irrigation district, contact the director and librarian of the Texas State Library to arrange for the transfer of the records to the custody of the Texas State Library and Archives Commission.*

1200-08 **LEVEE IMPROVEMENT DISTRICT RECLAMATION PLANS.** RETENTION: 3 years.

1200-09 **PRIVATE WATER COMPANY ANNUAL REPORTS** - Annual operations and financial reports of private water companies in counties over 1,500,000. RETENTION: PERMANENT.

1200-10 **STORMWATER CONTROL DISTRICT STORMWATER PLANS.** RETENTION: 3 years.

1200-11 **TEXAS NATURAL RESOURCE CONSERVATION COMMISSION ORDERS CONCERNING WATER DISTRICTS** - Copies of orders, findings, reports, and decisions from the Texas Natural Resource Conservation Commission or its predecessors relating to the creation and formation of irrigation, levee improvement, stormwater control, underground water conservation, water control and improvement, and water improvement districts. RETENTION: PERMANENT.

1200-12 **WATER ADJUDICATION CASE PAPERS** - Documentation received from the Texas Natural Resource Conservation Commission or its predecessors; and copies of documents and correspondence submitted to the Commission involving water rights adjudications to which the county is a party or in which the county has an interest. RETENTION: PERMANENT.

1200-13 **WATER CONTROL AND IMPROVEMENT DISTRICTS, RECORDS OF DISSOLVED** - Records of dissolved water control and improvement districts. RETENTION: *See retention note.* [By law - Water Code, Section 51.828.]

> ***Retention Note:*** *State law requires that a county clerk, after obtaining custody of the records of a dissolved water control and improvement district, contact the director and librarian of the Texas State Library to arrange for the transfer of the records to the custody of the Texas State Library and Archives Commission.*

1200-14 **WATER CONTROL AND PRESERVATION DISTRICT BOND RESOLUTIONS.** RETENTION: PERMANENT.

1200-15 **WATER DISTRICT ANNUAL AUDIT REPORTS.** RETENTION: 3 years.

1200-16 **WATER DISTRICT ANNUAL FINANCIAL DORMANCY AFFIDAVITS.** RETENTION: 3 years.

1200-17 **WATER DISTRICT ANNUAL FINANCIAL REPORTS.** RETENTION: 3 years.

1200-18 **WATER DISTRICT PROCEEDINGS RECORD** - Recorded proceedings of irrigation, underground water conservation, and water control and improvement district boards and of all orders or decrees of any court affecting the creation, boundaries, or validity of the districts. RETENTION: PERMANENT.

* 1200-19 **WATER DISTRICT BOND RECORD** - Bond record of drainage and water control and preservation districts. RETENTION: FE of cancellation of last bond under issue + 5 years.

> ***Retention Note:*** *Prior to disposal, bond records shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Older bond records from a time when the government itself or a local bank handled the issuance and payment of bonds often contain the names of local residents who subscribed to the bond issue. These bond records usually merit permanent retention for historical reasons.*

1200-20 **WATER DISTRICT COMMISSIONERS OF APPRAISEMENT REPORTS** - Final reports of commissioners of appraisement for taxation on benefit basis in irrigation, levee improvement, water control and improvement, and water improvement districts. RETENTION: PERMANENT.

1200-21 **WATER DISTRICT CONDEMNATION DECREES** - Certified final decrees of condemnation rendered by levee improvement, navigation, and water control and improvement district tribunals in eminent domain proceedings. RETENTION: PERMANENT.

1200-22 **WATER DISTRICT CONSTRUCTION CONTRACTS** - Construction contracts of drainage, irrigation, navigation, self-liquidating navigation, water control and improvement, water control and preservation, and water improvement districts.

a) Recorded copies. RETENTION: PERMANENT.

b) Filed copies. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

1200-23 **WATER DISTRICT CREATION REVIEW REPORTS.** RETENTION: PERMANENT.

1200-24 **WATER DISTRICT DISSOLUTION TAX RECEIPTS** - Dissolution tax receipts of drainage, irrigation, water control and improvement, and water improvement districts. RETENTION: FE + 3 years.

1200-25 **WATER DISTRICT FINANCIAL STATUS REPORTS** - Reports on financial status of drainage and navigation districts made by the county treasurer by order of commissioners court. RETENTION: PERMANENT.

1200-26 **WATER DISTRICT INFORMATION FORMS** - Information forms and boundary maps of each water district in a county whose principal function is to provide water and sewer services, including any statements of amendment or dissolution. RETENTION: PERMANENT.

1200-27 **WATER DISTRICT JUDGMENTS** - Certified judgments from district or higher courts on appeal from decisions of commissioners court relating to the creation of irrigation, levee improvement, and water control and improvement districts. RETENTION: PERMANENT.

1200-28 **WATER DISTRICT PETITIONS AND ORDERS TO ADD LAND** - Filed and recorded petitions to add land to drainage, irrigation, municipal utility, regional water, special utility, and water control and improvement districts granted by district boards.

a) Recorded copies. RETENTION: PERMANENT.

b) Filed copies. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

1200-29 **WATER DISTRICT RATE STATEMENTS** - Rate statements of municipal utility and regional utility districts under contract with cities concerning water and sewer rates with accompanying maps or plats of the districts. RETENTION: PERMANENT.

1200-30 **WATER DISTRICT SEMI-ANNUAL REPORTS** - Semi-annual reports of drainage and water improvement districts. RETENTION: 3 years.

1200-31 **WATER DISTRICT TENTATIVE DISSOLUTION TAX ROLLS** - Tentative dissolution tax rolls of irrigation and water control and improvement districts. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1200-32 **WATER DISTRICT TRUSTEE'S REPORTS** - Final accounts and reports to commissioners court by the county treasurer as trustee of dissolved drainage and water improvement districts or by the trustees of dissolved levee improvement districts. RETENTION: PERMANENT.

SECTION 1-5: MISCELLANEOUS RECORDS

1225-01 **BOARD OF EQUALIZATION NOTICES** - Copies of notices sent to property owners notifying them of impending changes in land valuation. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1225-02 **CHARGES AGAINST COUNTY HEALTH OFFICERS** - Charges or complaints against county health officers filed with commissioners court by the state. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1225-03 **COUNTY AUDITORIUM ANNUAL BUDGETS AND FINANCIAL STATEMENTS.** RETENTION: PERMANENT.

1225-04 **COUNTY BUILDING AUTHORITY ANNUAL BUDGETS.** RETENTION: PERMANENT.

1225-05 **COUNTY BUILDING AUTHORITY QUARTERLY REPORTS.** RETENTION: FE + 3 years.

* 1225-06 **COUNTY HEALTH OFFICER REPORTS.** RETENTION: 1 year, *but see retention note.* (Exempt from destruction request to the Texas State Library)

> ***Retention Note:*** *Prior to disposal, county health officers reports shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Some reports from county health officers, especially from the period 1909 to about 1930, dealing with the control and quarantine of epidemic diseases such as yellow fever may have historical value.*

1225-07 **COUNTY HISTORICAL COMMISSION REPORTS AND SURVEYS.** RETENTION: PERMANENT.

1225-07a **COUNTY AND REGIONAL HOUSING AUTHORITY ANNUAL REPORTS.** RETENTION: PERMANENT.

1225-08 **COUNTY MUSEUM ANNUAL BUDGETS AND FINANCIAL STATEMENTS.** RETENTION: PERMANENT.

1225-09 **COUNTY NURSE MONTHLY REPORTS.** RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1225-09a **COUNTY PARK BOARD ANNUAL FINANCIAL REPORTS.** RETENTION: PERMANENT.

1225-10 **EXTENSION AND DEMONSTRATION AGENTS' REPORTS** - Monthly and annual reports of county agricultural extension agents and county home demonstration agents. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1225-11 **ENCLOSED SCHOOL LAND REPORTS** - Annual reports to commissioners court by county surveyor on number of sections of school land sold and enclosed during the year. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1225-12 **FERRY LICENSE APPLICATIONS** - Original applications and/or copies of licenses issued to ferrymen, launch pilots, or branch pilots.

a) Those dated 1910 and before. RETENTION: PERMANENT.

b) Those dated 1911 and later. RETENTION: Termination, expiration, or denial of license + 4 years.

1225-13 **GLANDERS APPRAISEMENT REPORTS** - Reports of appraisement of horses, mules, and asses affected with glanders submitted by committees of appraisement. RETENTION: 2 years.

1225-14 **HOSPITAL BOARD OR DISTRICT REPORTS**

a) Quarterly and other partial year reports. RETENTION: FE + 3 years.

b) Annual reports. RETENTION: PERMANENT.

1225-15 **INSURANCE POLICIES ON COUNTY PROPERTY.** RETENTION: 4 years after the expiration or termination of the policy according to its terms.

1225-16 **INVENTORIES OF COUNTY PROPERTY**

(a) Capital asset equipment or property inventories (including sequential number property logs). RETENTION: US + 3 years.

(b) Inventory records (parts and supplies). RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

* 1225-17 **LEGAL OPINIONS** - Copies of legal opinions rendered to commissioners court, the county judge, or the county clerk by a county or district attorney. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

> ***Retention Note:*** *For the record copies of the opinions maintained permanently by county and district attorneys, see item number 1000-30 in Local Schedule GR (Records Common to All Local Governments).*

1225-18 **LIVESTOCK AUCTION COMMISSION MERCHANTS, QUARTERLY REPORTS OF.** RETENTION: 2 years.

1225-19 **MOSQUITO CONTROL DISTRICT BIANNUAL REPORTS.** RETENTION: PERMANENT.

1225-20 **ODOMETER READINGS** - Monthly reports of odometer readings of county-owned vehicles used by the county sheriff or deputies. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1225-21 **PAUPER APPLICATIONS** - Applications and petitions by persons requesting to be declared paupers and eligible for county aid, and similar applications by needy mothers. RETENTION: PERMANENT.

1225-22 **PAUPER RECORD (INDIGENT RECORD)** - Record of payments or allowances made to paupers or needy mothers by the commissioners court. RETENTION: PERMANENT.

* 1225-23 **PUBLIC WORKS PROJECT RECORDS** - Records series item number withdrawn. See item number 1075-16 in Local Schedule GR (Records Common to All Local Governments)

1225-24 **RECORD OF INMATES** - Register of inmates of county poorhouses or asylums. RETENTION: PERMANENT.

1225-25 **REPORTS OF ANIMALS SLAUGHTERED (BUTCHERS REPORTS)**

> 1) Originals of reports that *have been* recorded in Record of Animals Slaughtered [1475-14]. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)
>
> 2) Originals of reports that *have not been* recorded in Record of Animals Slaughtered [1475-14]. RETENTION: PERMANENT.

1225-26 **RURAL FIRE PREVENTION DISTRICT ANNUAL REPORTS.** RETENTION: PERMANENT.

1225-27 **SCALP BOUNTY RECORDS** - All documents relating to the payment of scalp bounties by commissioners court. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1225-28 **SOLID WASTE DISPOSAL PERMIT RECORDS** - Applications, copies of permits, and other documentation related to the issuance of permits by the county for the operation of facilities for the processing, storage, or disposal of solid waste. RETENTION: Expiration, cancellation, or denial of permit + 3 years.

1225-29 **SOLID WASTE DISPOSAL PLANS AND REGULATIONS** - Plans and regulations concerning the handling, transport, processing, storage, or disposal of solid waste in the county. RETENTION: PERMANENT.

1225-29a **SURPLUS AND SALVAGE PROPERTY REPORTS** - Reports on county surplus or salvaged property sold by competitive bid or at auction or destroyed. RETENTION: 1 year. [By law - Local Government Code, Section 263-155(b).] (Exempt from destruction request to the Texas State Library)

1225-30 **TICK ERADICATION INSPECTION REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1225-31 **TUBERCULOSIS CONTROL BOARD QUARTERLY REPORTS.** RETENTION: FE + 3 years.

1225-32 **WRECK-MASTER SALVAGE REPORTS**

a) Reports dated 1910 and earlier. RETENTION: PERMANENT.

b) Reports dated 1911 and later. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

SECTION 1-6: RECORDS OF THE COUNTY JUDGE

1250-01 **ACKNOWLEDGMENT RECORD** - Record of acknowledgments or proofs of instruments taken by the county judge as ex-officio notary public. RETENTION: 10 years.

1250-02 **ANNUAL FEE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1250-03 **CASH RECEIPTS.** RETENTION: FE + 3 years.

1250-04 **CONVICT LABOR RECORD** - Register of convicts doing work for the county or hired out to individuals and firms for private work. RETENTION: PERMANENT.

1250-05 **DAILY CASH BOOK OR REPORTS.** RETENTION: FE + 3 years.

1250-06 **DEPOSIT WARRANTS** - Copies of deposit warrants issued by the county clerk or the county treasurer for monies deposited in any funds or accounts of the county judge. RETENTION: FE + 3 years.

1250-07 **FEE BOOK.** RETENTION: FE + 5 years.

1250-08 **MONTHLY EXPENSE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

* 1250-09 **OPEN RECORDS REQUESTS** - Written open records requests, including those sent by electronic mail or facsimile, submitted to a county judge, including correspondence and other documentation relating to the requests.

a) Approved requests. RETENTION: Approval of request + 1 year. [Exempt from destruction request to the Texas State Library]

b) Denied requests. RETENTION: Denial of request + 2 years.

1250-10 **REPORTS OF COLLECTIONS (MONTHLY FEE REPORTS).** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

PART 2: COUNTY CLERK AS RECORDER

SECTION 2-1: PROPERTY RECORDS

1275-01 **ALIEN OWNED LAND RECORD.** RETENTION: PERMANENT.

1275-02 **APPLICATION RECORD - ACTUAL SETTLER.** RETENTION: PERMANENT.

1275-03 **APPLICATION RECORD - ADDITIONAL LANDS.** RETENTION: PERMANENT.

1275-04 **BILL OF SALE RECORD (PERSONAL PROPERTY RECORD).** RETENTION: PERMANENT.

1275-05 **BOARD OF LAND COMMISSIONERS, MINUTES OF (REGISTER OF HEADRIGHT CERTIFICATES).** RETENTION: PERMANENT.

1275-06 **BURNED DEED RECORD.** RETENTION: PERMANENT.

1275-07 **CEMETERY RECORDS** - Deeds, plats, and all other records relating to cemeteries situated in county, including any lists of persons buried. RETENTION: PERMANENT.

1275-08 **CLASSIFICATION RECORD (RECORD OF UNSOLD PUBLIC LANDS, SCHOOL LAND SALE RECORD).** RETENTION: PERMANENT.

1275-09 **CONDOMINIUM RECORD.** RETENTION: PERMANENT.

1275-10 **COUNTY DEEDS, EASEMENTS, AND RIGHTS OF WAY** - Originals and recorded copies of deeds to county-owned land and instruments relating to easements and rights of way granted to the county. RETENTION: PERMANENT.

1275-11 **DEED RECORD.** RETENTION: PERMANENT.

1275-12 **DELINQUENT TAX DEED RECORD (SHERIFF'S DEED RECORD).** RETENTION: PERMANENT.

1275-13 **LAND OFFICE NOTICES** - Notices of forfeiture of title to or lease of public school lands due to non-payment of interest or failure to drill offset wells.

a) Notices of forfeiture due to non-payment. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Notices of forfeiture due to failure to drill offset wells. RETENTION: 90 days after notation made in Oil and Gas Lease Record [1275-14] or Deed Record [1275-11]. (Exempt from destruction request to the Texas State Library)

1275-14 **OIL AND GAS LEASE RECORD.** RETENTION: PERMANENT.

1275-15 **OYSTER BED CLAIMS RECORD.** RETENTION: PERMANENT.

1275-16 **PATENT RECORD.** RETENTION: PERMANENT.

1275-17 **PLAT RECORD.** RETENTION: PERMANENT.

1275-18 **PUBLIC LAND LEASE RECORD (ABSTRACT OF LEASES OF PUBLIC LAND).** RETENTION: PERMANENT.

1275-19 **SLAVE RECORDS** - Records involving the sale, purchase, capture, or liberation of slaves. RETENTION: PERMANENT.

1275-20 **TRANSCRIBED DEED RECORD.** RETENTION: PERMANENT.

1275-21 **TRANSCRIBED SPANISH DEED RECORD.** RETENTION: PERMANENT.

1275-22 **TRANSFER OF PROPERTY REGISTER** - Record or register of property transfers, by sale or other means, showing names of grantor and grantee, type of instrument, description of property, date filed, and the page and volume number of the Deed Record [1275-11] in which the instrument is recorded. RETENTION: Destroy at option, *but see retention note.*

Retention Note: *A Transfer of Property register must be retained until a new index is compiled if an index to the Deed Record [1275-11] for the corresponding year or years is missing.*

1275-23 **VETERANS LAND BOARD NOTICES** - Notices of forfeiture of land purchase contracts due to non-payment. RETENTION: 90 days after notation made in the Deed Record [1275-11]. (Exempt from destruction request to the Texas State Library)

SECTION 2-2: MORTGAGE AND LIEN RECORDS

1300-01 **ABSTRACT OF JUDGMENT RECORD.** RETENTION: PERMANENT.

1300-02 **ASSIGNMENTS OF ACCOUNT NOTICES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-03 **ASSIGNMENT OF ACCOUNTS REGISTER.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-04 **ATTACHMENT LIEN RECORD.** RETENTION: PERMANENT.

1300-05 **CHATTEL MORTGAGE ATTACHED TO REALTY REGISTER (MACHINERY MORTGAGE REGISTER).** RETENTION: PERMANENT.

1300-06 **CHATTEL MORTGAGE REGISTER (CHATTEL MORTGAGE RECORD).** RETENTION: Destroy at option, *but see retention note.*

> ***Retention Note:*** *It is an exception to the retention period given, that any chattel mortgage register containing recorded copies of chattel mortgages dated 1846-1930, 1935, 1940, 1945, and 1950, with corresponding indexes must be retained PERMANENTLY for historical reasons.*

1300-07 **CHATTEL MORTGAGE RELEASES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-08 **CHATTEL MORTGAGES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-09 **CHATTEL MORTGAGES ATTACHED TO REALTY (MACHINERY MORTGAGES).** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-10 **DEED OF TRUST RECORD (MORTGAGE RECORD).** RETENTION: PERMANENT.

1300-11 **FACTORS LIENS AND LIEN RELEASES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-12 **FACTORS LIEN REGISTER.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-13 **FEDERAL LAND BANK DEED OF TRUST RECORD (AMORTIZATION RECORD).** RETENTION: PERMANENT.

1300-14 **FEDERAL TAX LIEN NOTICES AND RELEASES.** RETENTION: AR + 1 year.

1300-15 **FEDERAL TAX LIEN RECORD.** RETENTION: AR + 1 year.

1300-16 **FINANCING STATEMENT FILE REGISTER** - Register of financing statements and associated statements received for filing.

a) If the register *does not* contain a record of filing fees collected. RETENTION: AV.

b) If the register *does* contain a record of filing fees collected, but the information is duplicated in a Fee Book [1525-06]. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

c) If the register *does* contain a record of filing fees collected and the information is not duplicated in a Fee Book [1525-06]. RETENTION: FE + 3 years after last entry.

1300-17 **FINANCING STATEMENTS.** RETENTION: Lapse or termination + 1 year, *but see retention note.* [By law - Business and Commerce Code, Sections 9.403(a) and 9.404(b).]

> ***Retention Note:*** *In those counties that retain the hard copy of the financing statement in an alphabetical or other form of file in addition to the principal copy of the financing statement, both copies may be disposed of at the expiration of the retention period.*

1300-18 **HOSPITAL LIEN RECORD.** RETENTION: AR + 1 year.

1300-19 **HOSPITAL LIENS AND LIEN RELEASES.** RETENTION: AR + 1 year.

1300-20 **LABORERS LIEN RECORD (EMPLOYEES LIEN RECORD).** RETENTION: AR + 1 year.

1300-21 **LANDLORDS LIEN RECORD (RENTAL LIEN RECORD).** RETENTION: AR + 1 year.

1300-22 **LIS PENDENS RECORD.** RETENTION: AR + 1 year.

1300-23 **MECHANICS AND MATERIALMEN LIEN RECORD.** RETENTION: PERMANENT.

1300-23a **MENTAL HEALTH LIENS AND LIEN RELEASES.** RETENTION: AR + 1 year.

1300-24 **PROGENY LIEN RECORD** - Recorded agreements establishing liens on progeny of livestock. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1300-25 **RELEASE RECORD** - Recorded releases of mortgages, deeds of trust, liens, and other instruments affecting real property. RETENTION: PERMANENT.

1300-26 **FINANCING STATEMENTS, REQUESTS FOR INFORMATION FROM** - Forms requesting information from, or copies of, financing statements or statements of assignment. RETENTION: 30 days. (Exempt from destruction request to the Texas State Library.)

1300-27 **SALE OF REAL PROPERTY UNDER CONTRACT LIEN, NOTICES OF** - Notices of sale of real property under a power of sale conferred by a deed of trust or other contract lien. RETENTION: Day after date of sale. [By law - Property Code, Section 51.002(f).] (Exempt from destruction request to the Texas State Library)

1300-28 **SECURITY INTEREST IN FIXTURES, INDEX TO** - Index to financing statements related to fixtures.

a) If *only* an index to financing statements related to fixtures filed from 1967 through 1973. RETENTION: AR + 1 year.

b) If an index to financing statements related to fixtures filed after 1 January 1974 and recorded in the Deed of Trust Record [1300-10]. RETENTION: PERMANENT.

1300-29 **STATE TAX LIEN RECORD.** RETENTION: AR + 1 year.

1300-30 **STATE TAX LIENS AND LIEN RELEASES.** RETENTION: AR + 1 year.

1300-31 **UTILITY SECURITY RECORDS (AFTER ACQUIRED PROPERTY RECORDS)** - Filed and recorded security mortgages, deeds of trust, indentures, supplemental mortgages, and similar instruments, including those containing after acquired property provisions, of public utilities and railroads.

a) Original utility security instruments filed with Chattel Mortgages Attached to Realty [1300-09], Chattel Mortgages [1300-08], Financing Statements [1300-17], or separately, and *recorded.* RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Original utility security instruments filed with Chattel Mortgages Attached to Realty [1300-09], Chattel Mortgages [1300-08], Financing Statements [1300-17], or separately and *not recorded.* RETENTION: PERMANENT.

c) Abstracts or recorded copies of utility security instruments abstracted or recorded in the Chattel Mortgages Attached to Realty Register [1300-05], Deed of Trust Record [1300-10], or in separate volumes. RETENTION: PERMANENT.

d) Index. RETENTION: PERMANENT.

1300-32 **VENDORS LIEN RECORD.** RETENTION: PERMANENT.

SECTION 2-3: BIRTH RECORDS

***Retention Note:** Section 191.026, Health and Safety Code was amended by the 75th Legislature in 1997 by adding subsection (e) to provide the following:*

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, death and fetal deaths maintained by the bureau of vital statistics; and

(2) before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the bureau's database and that each record is included in the database or otherwise accounted for.

The permanent retention period established in this schedule and by law for item numbers 1325-03, 1325-04(b), 1325-04(d), 1325-05, 1325-06, 1325-08, 1325-11(a), 1325-11(d), 1325-13, 1325-14, and 1325-17 is not required for those county clerks who choose to follow the option permitted by Section 191.026(e), provided they do so in accordance with procedures developed by the Bureau of Vital Statistics of the Texas Department of Health to implement the section.

1325-01 *[Withdrawn, see 1325-04]*

1325-02 **BAPTISMAL AND PHYSICIANS REGISTERS** - Baptismal registers, account books of physicians, or any similar record that provides a listing of baptisms and births that have taken place in the county. RETENTION: PERMANENT.

* 1325-03 **BIRTH AND DEATH RECORD** (combination form of the Birth Record and the Death Record). RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

1325-04 **BIRTH CERTIFICATES** - Copies of birth certificates, supplementary birth certificates, delayed birth certificates and supporting documentation, and amendments to birth certificates received by the county clerk as a local registrar or from local registrars or the Texas Department of Health.

a) Notices of birth (1873-1876; 1903-1911) or copies of birth certificates (1911-1927) that *have been* recorded or entered in the Birth Record [1325-08]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

* b) Notices of birth (1873-1876; 1903-1911) or copies of birth certificates (1911-1927) that *have not been* recorded or entered in the Birth Record [1325-08]. RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

c) Copies of birth certificates (1927-current), supplementary birth certificates (1935-current), delayed birth certificates (1939-current), or amendments to birth certificates (1927-current) that *have been* recorded in full in the Birth Record [1325-05], the Delayed Birth Record [1325-06], or a Supplementary Birth Record [1325-08]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

* d) Copies of birth certificates (1927-current), supplementary birth certificates (1935-current), delayed birth certificates (1939-current), or amendments to birth certificates (1927-current) that *have not been* recorded in full in the

Birth Record [1325-05], the Delayed Birth Record [1325-06], or a Supplementary Birth Record [1325-08]. RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

* 1325-05 **BIRTH RECORD (BIRTH REGISTER** before 1912). RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

* 1325-06 **DELAYED BIRTH RECORD (PROBATE BIRTH RECORD).** RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

1325-07 **ORDERS FOR CERTIFIED COPIES OF ILLEGITIMATE BIRTH CERTIFICATES** - Applications for the issuance of and court orders or judge's letters authorizing the issuance of illegitimate birth certificates. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

* 1325-08 **SUPPLEMENTARY BIRTH RECORD** - Recorded or duplicate copies of supplementary birth certificates issued as the result of adoption, legitimation, or judicial determination of paternity. RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

* 1325-08a **RECORD OF ISSUANCE OF CERTIFIED COPIES OR ABSTRACTS OF BIRTH RECORDS** - Record of the issuance of certified copies or abstracts of birth records showing date issued, document number, name and address of person to whom issued, and form of identification presented by applicant. RETENTION: 3 years. [By regulation - 25 TAC 181.28(e).]

Retention Note: *The administrative rule of the Texas Department of Health setting the 3 year minimum retention period states that the application form, with the document number inserted, may serve to document the issuance of the copies or abstracts. For those clerks who document the issuance of the copies or abstracts by other means, the applications need be retained only AV after the required information from the application is entered in the alternative record of issuance.*

SECTION 2-4: DEATH RECORDS

1325-09 *[Withdrawn, see 1325-11]*

1325-10 **BURIAL TRANSIT PERMIT RECORDS (BURIAL PERMIT RECORDS)** - Stubs, copies, or lists of burial transit permits issued. RETENTION: 2 years.

1325-11 **DEATH CERTIFICATES** - Copies of death certificates, fetal death certificates, and amendments to death certificates received by the county clerk as a local registrar or from local registrars or the Texas Department of Health.

a) Notices of death (1903-1911) or copies of death certificates (1911-1927) that *have been* recorded or entered in the Death Record [1325-13]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

* b) Notices of death (1903-1911) or copies of death certificates (1911-1927) that *have not been* recorded or entered in the Death Record [1325-13]. RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

c) Copies of death certificates (1927-current), fetal death certificates (1951-current), delayed death certificates (1939-current), or amendments to death certificates (1927-current) that *have been* recorded in full in the Death Record [1325-13], the Delayed Death Record [1325-14], or a Fetal Death Record [1325-17]. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

* d) Copies of death certificates (1927-current), fetal death certificates (1951-current), delayed death certificates (1939-current), or amendments to death certificates (1927-current) that *have not been* recorded in full in the Death Record [1325-13], the Delayed Death Record [1325-14], or a Fetal Death Record [1325-17]. RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

1325-12 **NOTIFICATIONS OF DEATH OF PERSONS UNDER 55** - Abstracts, transcripts, or copies of death certificates from the Bureau of Vital Statistics of persons under age 55 (or under 18 prior to May 1987) whose birth certificates were recorded by the county clerk. RETENTION: Until notation made in Birth Record. (Exempt from destruction request to the Texas State Library)

* 1325-13 **DEATH RECORD.** RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

* 1325-14 **DELAYED DEATH RECORD (PROBATE DEATH RECORD).** RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

1325-15 **DISINTERMENT PERMITS** - Copies of disinterment permits issued by the county clerk. RETENTION: PERMANENT.

1325-16 **DISINTERMENT PERMITS, APPLICATIONS FOR.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

* 1325-17 **FETAL DEATH RECORD (STILLBORN RECORD).** RETENTION: PERMANENT, *but see retention note at the beginning of Section 2-3.* [By law - Health and Safety Code. Section 191.026.]

1325-18 **REPORTS OF DEATH** - Reports of death filed by funeral directors or persons acting as such with the county clerk. RETENTION: Until receipt of death certificate. (Exempt from destruction request to the Texas State Library)

* 1325-18a **RECORD OF ISSUANCE OF CERTIFIED COPIES OR ABSTRACTS OF DEATH RECORDS** - Record of the issuance of certified copies or abstracts of death records showing date issued, document number, name and address of person to whom issued, and form of identification presented by applicant. RETENTION: 3 years. [By regulation - 25 TAC 181.28(e).]

> ***Retention Note:*** *The administrative rule of the Texas Department of Health setting the 3 year minimum retention period states that the application form, with the document number inserted, may serve to document the issuance of the copies or abstracts. For those clerks who document the issuance of the copies or abstracts by other means, the applications need be retained only AV after the required information from the application is entered in the alternative record of issuance.*

SECTION 2-5: MARRIAGE RECORDS

1325-19 **DECLARATION OF INFORMAL MARRIAGE RECORD.** RETENTION: PERMANENT.

1325-20 **MARRIAGE AFFIDAVITS** - Affidavits by couples or by third parties that the couples are of age to marry without parental consent. RETENTION: AV, *but see retention note.* (Exempt from destruction request to the Texas State Library)

> ***Retention Note:*** *Marriage affidavits vary considerably in the quality and quantity of the information they contain. Some, especially those filed or recorded separately, may have sufficient genealogical information to merit retention for historical purposes. In such cases this schedule recommends, but does not require, that the marriage affidavits be retained PERMANENTLY.*

1325-21 **MARRIAGE BONDS** - Marriage bonds or similar documents evidencing marriage prior to 5 June 1837. RETENTION: PERMANENT.

1325-22 **MARRIAGE CONTRACT RECORD** - Recorded pre-nuptial or spousal agreements and associated documentation. RETENTION: PERMANENT.

1325-23 **MARRIAGE LICENSE APPLICATIONS.** RETENTION: 90 days. (Exempt from destruction request to the Texas State Library)

1325-24 **MARRIAGE LICENSE CORRECTIONS** - Affidavits or notices of correction of information on marriage licenses due to clerical or other error, including any attached incorrect versions of the marriage license.

a) If corrected information *is* recorded or noted in the Marriage Record [1325-26]. RETENTION: AV after correction made. (Exempt from destruction request to the Texas State Library)

b) If corrected information *is not* recorded or noted in the Marriage Record [1325-26]. RETENTION: PERMANENT.

1325-25 **MARRIAGE LICENSE STUB BOOKS (MARRIAGE LICENSE RECEIPTS)**

a) In those counties that no longer use stub books. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) In those counties that still use license stub books. RETENTION: AV after all licenses in the volume have been issued. (Exempt from destruction request to the Texas State Library)

1325-26 **MARRIAGE RECORD.** RETENTION: PERMANENT.

1325-27 **MARRIAGE RECORD (NEGRO).** RETENTION: PERMANENT.

1325-28 **MARRIAGES, LISTS OF** - Lists of persons married in county.

a) If the list contains the names of couples all of whose marriage licenses *are* recorded in an existing volume of the Marriage Record [1325-26]. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) If the list contains the names of couples all of whose marriage licenses *are not* recorded in an existing volume of the Marriage Record [1325-26]. RETENTION: PERMANENT.

1325-29 **MEDICAL EXAMINATION CERTIFICATES AND WAIVERS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1325-30 **NOTICE OF INTENTION TO MARRY RECORD.** RETENTION: PERMANENT.

1325-31 **PARENTAL CONSENT (OR OBJECTION) FORMS**

a) Parental consents or objections dated 1850 or earlier. RETENTION: PERMANENT.

b) All others. RETENTION: 90 days. (Exempt from destruction request to the Texas State Library)

* 1325-32 **CHILD SUPPORT AFFIDAVITS** - Statements filed by applicants for marriage licenses indicating that delinquent court-ordered child support is not owed. RETENTION: AV (Exempt from destruction request to the Texas State Library)

SECTION 2-6: ELECTION RECORDS

Note: All Class 1350 records were withdrawn effective February 1, 1992. County clerks should use Local Schedule EL (Records of Elections and Voter Registration) to determine retention periods for election records.

SECTION 2-7: TAX RECORDS

1375-01 **CERTIFICATES OF CANCELLATION/CORRECTION RECORD** - Recorded cancellation or correction certificates issued by tax assessor-collector and approved by commissioners court acknowledging that property was erroneously reported as delinquent. RETENTION: 20 years.

1375-02 **DELINQUENT AND INSOLVENT TAXPAYERS, LISTS OF** - Copies of annual lists of delinquent and insolvent taxpayers sent by the tax assessor-collector to commissioners court (1838-1876).

a) All lists, whether bound, recorded, or separate dated 1884 or earlier. RETENTION: PERMANENT.

b) All reports dated 1885 or later. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-03 **DELINQUENT TAX RECORD.** RETENTION: Destroy at option.

1375-04 **DELINQUENT TAX ROLLS.** RETENTION: Destroy at option.

1375-05 **DRUMMERS LICENSE RECORD** - Recorded special $50 occupation tax receipts issued to drummers (traveling salesmen) by the State Comptroller. RETENTION: PERMANENT.

1375-06 **ERRORS IN ASSESSMENT, LISTS OF.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-07 **OCCUPATION TAX REGISTER.** RETENTION: PERMANENT.

1375-08 **RECORD OF LAND OR TOWN LOTS SOLD FOR TAXES** - Record or register of land or town lots in the county sold for taxes. RETENTION: PERMANENT.

1375-09 **REDEMPTION RECORD.** RETENTION: PERMANENT.

1375-10 **REPORTS OF LAND SOLD UNDER JUDGMENT.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-11 **REPORTS OF LAND SOLD UNDER JUDGMENT AND REDEEMED.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-12 **REPORTS OF COUNTY TAXES COLLECTED** - Monthly, quarterly, and annual reports of county taxes collected, submitted by the tax assessor-collector .

a) Monthly reports. RETENTION: FE + 3 years.

b) Quarterly reports. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

c) Annual reports. RETENTION: PERMANENT.

1375-13 **REPORTS OF STATE AND COUNTY TAXES COLLECTED** - Annual, quarterly, and monthly reports of state and county taxes collected, submitted by tax assessor-collector to commissioners court. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-14 **REPORTS ON TAXES AND INDEBTEDNESS OF LOCAL UNITS OF GOVERNMENT.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-15 **TAX RECEIPT RECORD** - Recorded tax receipts submitted by taxpayers. RETENTION: 20 years.

1375-16 **TAX RECEIPTS** - Receipt stubs or copies of receipts issued by the tax assessor-collector. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1375-17 **TAX ROLLS** - Copies of county tax rolls or assessment lists. RETENTION: Destroy at option.

SECTION 2-8: BOND AND DEPUTATION RECORDS

1400-01 **ANATOMICAL BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-02 **BONDS AND CONTRACTS TO PAY LIENS AND CLAIMS** - Filed statutory payment bonds (Hardeman Act) with accompanying construction contracts or agreements between contractor and owner.

a) If recorded. RETENTION: AR.

b) If *not* recorded. RETENTION: AR + 5 years.

1400-03 **BONDS AND CONTRACTS TO PAY LIENS AND CLAIMS RECORD** - Recorded statutory payment bonds (Hardeman Act) and construction contracts or agreements between contractor and owner. RETENTION: AR + 5 years.

1400-04 **BUTCHERS BONDS**

a) Recorded copies and filed copies that *have not been* recorded. RETENTION: AR + 5 years.

b) Filed copies that *have been* recorded. RETENTION: AR.

1400-05 **COMMISSION MERCHANTS BOND RECORD.** RETENTION: AR + 5 years.

1400-06 **COMMISSION MERCHANTS BONDS**

a) If recorded. RETENTION: AR.

b) If *not* recorded. RETENTION: AR + 5 years.

1400-07 **CONTRACTING STEVEDORES BOND RECORD.** RETENTION: AR + 5 years.

1400-08 **CONTRACTORS BONDS** - Filed or recorded performance bonds of contractors under contract with county. RETENTION: AR + 5 years.

1400-09 **COUNTY DEPOSITORY BONDS** - Bonds of banks acting as depositories for county funds and statements describing unencumbered and non-exempt lands owned by sureties. RETENTION: AR + 5 years.

1400-10 **DEPUTATION RECORD** - Recorded notices of appointment of persons to perform duties of county officials as deputies. RETENTION: PERMANENT.

1400-11 **DEPUTATIONS** - Filed notices of appointment of persons to perform duties of county officials as deputies. RETENTION: AR + 5 years or termination of employment + 5 years, whichever sooner.

1400-12 **FERRY BONDS** - Filed or recorded bonds of ferrymen, launch pilots, or branch pilots licensed by commissioners court.

a) Bonds dated 1910 and earlier. RETENTION: PERMANENT.

b) Bonds dated 1911 and later. RETENTION: AR + 5 years.

1400-13 **LIQUOR AND MALT LIQUOR DEALERS BOND RECORD.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-14 **LIQUOR AND MALT LIQUOR DEALERS BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-15 **LIVESTOCK AUCTION COMMISSION MERCHANTS BOND RECORD.** RETENTION: AR + 5 years.

1400-16 **LIVESTOCK AUCTION COMMISSION MERCHANTS BONDS**

a) If recorded. RETENTION: AR.

b) If *not* recorded. RETENTION: AR + 5 years.

1400-17 **LIVESTOCK COMMISSION MERCHANTS BOND RECORD.** RETENTION: AR + 5 years.

1400-18 **LIVESTOCK COMMISSION MERCHANTS BONDS**

a) If recorded. RETENTION: AR.

b) If *not* recorded. RETENTION: AR + 5 years.

1400-19 **LOAN BROKERS BOND RECORD.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-20 **LOAN BROKERS BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-21 **NOTARY PUBLIC BOND RECORD.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-22 **NOTARY PUBLIC BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-23 **OATH OF OFFICE RECORD** - Recorded oaths of office of county officials and deputies, including those of the directors and officers of special districts and that are or were required by law to have their oaths.

a) If recorded in the Official Bond Record [1400-26], the Official Bond and Deputation Record [1400-25], or the Deputation Record [1400-10]. RETENTION: Follow the retention for the records indicated.

b) If recorded separately. RETENTION: 1 year after the oaths of all officials or deputies in volume have left office.

1400-24 **OATHS OF OFFICE** - Filed oaths of office of county officials and deputies, including those of the directors and officers of special districts that are or were required by law to take the oath of office and file it with the county clerk.

a) If filed with Official Bonds [1400-27] or Deputations [1400-11]. RETENTION: Follow the retention for the records indicated.

b) If filed separately. RETENTION: 1 year after the official or deputy leaves office.

1400-25 **OFFICIAL BOND AND DEPUTATION RECORD.** RETENTION: PERMANENT.

1400-26 **OFFICIAL BOND RECORD.** RETENTION: PERMANENT.

1400-27 **OFFICIAL BONDS** - Filed bonds and qualifying oaths of county officials and deputies, including those of the directors and officials of special districts that are or were required by law to be filed with the county clerk. RETENTION: AR + 5 years or termination of employment + 5 years, whichever sooner.

1400-28 **PAWNBROKERS BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1400-29 **PUBLIC WAREHOUSEMEN BONDS AND APPLICATIONS**

a) Recorded copies and filed copies that *have not been* recorded. RETENTION: AR + 5 years.

b) Filed copies that *have been* recorded. RETENTION: AR.

1400-30 **PUBLIC WEIGHERS BOND RECORD.** RETENTION: AR + 5 years.

1400-31 **PUBLIC WEIGHERS BONDS.** RETENTION: AR + 5 years.

1400-32 **WRECK-MASTERS BONDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

SECTION 2-9: BUSINESS AND PROFESSIONAL RECORDS

1425-01 **ACCOUNT BOOKS OF PRIVATE BUSINESSES AND ORGANIZATIONS** - Account books, ledgers, registers, and similar financial or administrative records of private businesses or organizations filed for record with the county clerk. RETENTION: AV. (Exempt from destruction request to the Texas State Library, but use discretion. Some of these records may merit permanent preservation for historical reasons.)

Retention Note: *Private businesses and organizations, especially insurance companies, benevolent associations, and agriculture-related businesses, occasionally filed account books and other financial records with the county clerk; some of which may have come into the possession of the county clerk as clerk to the county court and the keeper of trust funds.*

1425-02 **ANATOMICAL AFFIDAVITS** - Affidavits of agents in charge of unclaimed human remains that relatives of the deceased cannot be found. RETENTION: 4 years.

1425-03 **ASSUMED NAME CERTIFICATES**

a) Certificates filed 28 August 1977 and earlier. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Certificates filed 29 August 1977 and later. RETENTION: AR + 2 years.

1425-04 **ASSUMED NAME REGISTER** - Register of certificates filed by individuals, owners of businesses, or by corporations conducting business or under an assumed name. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1425-05 **BANKS, RECORDS RELATING TO THE CREATION, OPERATION, AND DISSOLUTION OF.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-06 **BUTCHERS REGISTER** - Register of slaughterers or butchers who slaughter less than 300 head of cattle a day for profit. RETENTION: PERMANENT.

1425-07 **COTTON GINNERS RECORD** - Affidavits of cotton ginners pledging to report the number of bales ginned to the state and stub books or registers of certificates issued for receipt of affidavits. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-08 **DENTAL RECORD** - Recorded licenses of dentists issued by local boards or by the state. RETENTION: PERMANENT.

1425-09 **DISCHARGE RECORD** - Recorded copies of miltary discharge papers. RETENTION: PERMANENT.

1425-10 **EMBALMERS RECORD** - Recorded licenses of embalmers, morticians, or funeral directors issued by the state. RETENTION: PERMANENT.

1425-11 **FARMERS COOPERATIVE SOCIETIES - CHARTERS** - Charters and by-laws, and any amendments, of farmers' cooperative societies. RETENTION: PERMANENT.

1425-12 **FIREMEN, LISTS OF** - Lists of volunteer firemen. RETENTION: PERMANENT.

1425-13 **GOING OUT OF BUSINESS SALE RECORDS.** RETENTION: Date of filing of post-sale inventory + 2 years.

1425-14 **LIMITED PARTNERSHIP RECORD** - Recorded limited partnership documents. RETENTION: PERMANENT.

1425-15 **MIDWIFE IDENTIFICATION FORMS** - Identification forms of midwives licensed by the state. RETENTION: 13 months or when replaced by new form, whichever sooner. (Exempt from destruction request to the Texas State Library)

1425-16 **MINISTRY REGISTER** - Recorded ordination certificates of pastors. RETENTION: PERMANENT.

1425-17 **MUSTER ROLLS.** RETENTION: PERMANENT.

1425-18 **NATUROPATHIC RECORD** - Recorded licenses of naturopaths issued by the state. RETENTION: PERMANENT.

1425-19 **NOTARY PUBLIC APPOINTMENT RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-20 **NURSES RECORD** - Recorded certificates of nurses issued by the state. RETENTION: PERMANENT.

1425-21 **OPTOMETRY RECORD** - Recorded licenses of optometrists issued by the state. RETENTION: PERMANENT.

1425-22 **PAWNBROKER SALE REPORTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-23 **PHARMACY REGISTER** - Register of pharmacists or recorded permits of pharmacists issued by local boards. RETENTION: PERMANENT.

1425-24 **POLYGRAPH EXAMINERS RECORD** - Recorded licenses of polygraph examiners issued by the state. RETENTION: PERMANENT.

1425-25 **POWER OF ATTORNEY RECORD** - Recorded instruments conveying or revoking power of attorney. RETENTION: PERMANENT.

1425-26 *[Withdrawn]*

1425-27 **PUBLIC UTILITY CORPORATION RECORD** - Recorded annual financial reports of public utility corporations operating in the county.

a) Recorded reports and original reports that *have not been* recorded. RETENTION: PERMANENT.

b) Originals of reports that *have been* recorded. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-28 **RAILROADS - ARTICLES OF INCORPORATION** - Filed articles of incorporation and by-laws of railroads. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1425-29 **STATEMENTS OF ABANDONMENT OF USE OF ASSUMED NAME.** RETENTION: 2 years.

1425-30 **TRADEMARK REGISTER.** RETENTION: PERMANENT.

1425-31 **TUBERCULOSIS NURSES RECORD** - Recorded certificates of tuberculosis nurses issued by the state. RETENTION: PERMANENT.

1425-32 **WORKMEN'S COMPENSATION LIABILITY RECORD** - Recorded notices from businesses indicating compliance with the Workmen's Compensation Act (1917) and the Employer's Liability Act (1923). RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

SECTION 2-10: SCHOOL RECORDS

1450-01 **ABSTRACTS OF SCHOOL CENSUSES** - Abstracts of school censuses compiled by the tax assessor-collector (1854-1885) or district trustees (1885-1905). RETENTION: PERMANENT.

1450-02 **ANNUAL AUDIT REPORTS OF COMMON SCHOOL DISTRICTS.** RETENTION: PERMANENT.

1450-03 **ANNUAL STATEMENTS OF SCHOOL FUNDS (ANNUAL REPORTS OF COUNTY SCHOOL ACCOUNTS).** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1450-04 **CONSOLIDATED SCHOLASTIC CENSUS ROLLS.** RETENTION: PERMANENT.

1450-05 **RECORD OF SCHOOL DISTRICTS** - Proceedings of county board of school trustees or commissioners court establishing school district boundaries. RETENTION: PERMANENT.

1450-06 **SCHOOL DISTRICT BUDGETS**

a) Independent school districts. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Common school districts. RETENTION: PERMANENT.

SECTION 2-11: LIVESTOCK RECORDS

1475-01 **ANIMALS KILLED ON RAILROAD RIGHT-OF-WAY RECORD.** RETENTION: Last entry + 3 years.

1475-02 **ANIMALS KILLED ON RAILROAD RIGHT-OF-WAY REPORTS.** RETENTION: 3 years.

1475-03 **BILL OF SALE RECORD (LIVESTOCK).** RETENTION: PERMANENT.

1475-04 **BRAND REFERENCE BOOK** - Record used as a guide to the symbols used as marks and brands and serving as a form of index to the Marks and Brands Record [1475-13]. RETENTION: PERMANENT.

1475-05 **BRAND TRANSFER RECORD** - Record of the transfer or sale of marks and brands. RETENTION: PERMANENT.

1475-06 **CATTLE RECORDS** - Bills of sale and shipment records of cattle, including lists of marks and brands; names of purchasers, sellers, and shippers; and inspection reports. RETENTION: PERMANENT.

1475-07 *[Withdrawn, see 1475-09]*

1475-08 **ESTRAY RECORD** - Recorded affidavits and bonds of takers-up of estrayed animals, affidavits of appraisal of the animals, and any reports of the death of estrays or affidavits of ownership of estrays. RETENTION: PERMANENT.

1475-09 **ESTRAY RECORDS** - Filed documents relating to the taking-up, recovery, or sale of estrays filed by the sheriff or other takers-up of estrays. RETENTION: 3 years.

1475-10 *[Withdrawn, see 1475-09]*

1475-11 **LIVESTOCK QUARANTINE RECORDS** - Reports, notices, orders, and similar records relating to the quarantine of livestock. RETENTION: Lifting of quarantine + 3 years.

1475-12 **MARKS AND BRANDS APPLICATIONS.** RETENTION: 2 years.

1475-13 **MARKS AND BRANDS RECORD.** RETENTION: PERMANENT.

1475-14 **RECORD OF ANIMALS SLAUGHTERED (BUTCHERS' RECORD)** - Recorded reports of animals slaughtered. RETENTION: PERMANENT.

1475-15 **RECORD OF INSPECTION (RECORD OF HIDES AND ANIMALS)** - Certified copy of the records of inspection by the inspector of hides and animals. RETENTION: PERMANENT.

1475-16 **TATTOO REGISTRATIONS** - Certificates of registration for tattoo marks of hogs, dogs, sheep, or goats filed by the Texas Department of Public Safety. RETENTION: PERMANENT.

SECTION 2-12: WATER RECORDS

1500-01 **CAUSEWAY RECORD** - Recorded statements and maps detailing the location, ownership, size, etc. of bridges, dams, dikes, causeways, and roadways constructed across any arm, inlet, or saltwater bay of the Gulf of Mexico. RETENTION: PERMANENT.

1500-02 **CERTIFICATES OF ADJUDICATION RECORD** - Recorded certificates of adjudication issued by the Texas Natural Resource Conservation Commission or its predecessors authorizing the appropriation, storage, or diversion of state water as determined by court action. RETENTION: PERMANENT.

1500-03 **WATER PERMIT RECORD (IRRIGATION RECORD)** - Recorded permits and associated documentation issued by the Texas Natural Resource Conservation Commission or its predecessors authorizing the appropriation, storage, or diversion of state water. RETENTION: PERMANENT.

1500-04 **WATER RIGHTS AGREEMENT RECORD** - Recorded agreements between the Texas Natural Resource Conservation Commission and claimants for the administration of unadjudicated water rights. RETENTION: PERMANENT.

1500-05 **WATER RIGHTS RECORD (IRRIGATION RECORD)** - Recorded statements of water rights appropriations or declarations of intent to appropriate state water, including maps and plats denoting the routes of canals and ditches. RETENTION: PERMANENT.

SECTION 2-13: ADMINISTRATIVE AND FINANCIAL RECORDS

1525-01 **ACKNOWLEDGMENT RECORD (COUNTY CLERK)** - Record of acknowledgments or proofs of instruments taken by the county clerk as ex-officio notary public. RETENTION: 10 years.

1525-02 **ACKNOWLEDGMENT RECORD (NOTARY PUBLIC)** - Record of acknowledgments or proofs of instruments taken by notaries public. RETENTION: 10 years.

1525-03 **ANNUAL FEE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1525-04 **CASH RECEIPTS.** RETENTION: FE + 3 years.

1525-05 **DAILY CASH BOOK OR REPORTS.** RETENTION: FE + 3 years.

1525-06 **FEE BOOK.** RETENTION: FE + 5 years.

1525-07 **FEE STATEMENTS** - Copies of statements of filing fees due sent out by county clerk to companies or individuals. RETENTION: FE + 3 years.

1525-08 **INSTRUMENTS LEFT FOR RECORD** - The following instruments that *have been* recorded as required or permitted by law, but are unclaimed by their owners or are unreturnable. The instruments may be disposed of at the expiration of the retention period given for each record below, with the retention period dating from the date of recording.

a) Deeds, deeds of trust and mortgages, liens, oil and gas leases, powers of attorney, military discharge papers, and marriage licenses. RETENTION: 5 years.

b) Bills of sale [1275-04 and 1475-03] and tax receipts. RETENTION: 2 years.

1525-09 **INSTRUMENTS SENT, RECORD OF** - Record or register of recorded instruments returned by mail to those who filed them. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1525-10 **MONTHLY EXPENSE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1525-11 *[Withdrawn February 1, 1992]*

1525-12 **OPEN MEETING NOTICES** - Notices of open meetings of the governing bodies of water districts and all other special districts required by law to file notices. RETENTION: 2 years.

* 1525-13 **OPEN RECORDS REQUESTS** - Written open records requests, including those sent by electronic mail or facsimile, submitted to a county clerk, including correspondence and other documentation relating to the requests.

a) Approved requests. RETENTION: Approval of request + 1 year. [Exempt from destruction request to the Texas State Library]

b) Denied requests. RETENTION: Denial of request + 2 years.

Caution: *This records series does not include applications for the issuance of certified copies or abstracts of birth or death records. See items numbers 1325-08a and 1325-18a.*

* 1525-14 **RECORDS DESTRUCTION NOTICES** - Records destruction notices filed with the county clerk by other county officials and offices. RETENTION: PERMANENT.

1525-15 **RECORDS MANAGEMENT RECORDS**

a) Records control schedules (including all successive versions of or amendments to schedules). RETENTION: PERMANENT.

b) Records destruction documentation - Records documenting the destruction of records under records control schedules, including requests submitted to the Texas State Library and Archives Commission for authorization to destroy unscheduled records or the originals of permanent records that have been microfilmed. RETENTION: PERMANENT.

c) Records inventories - Lists or inventories of the active and inactive records created or received by a county office. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

d) Records management plans and policy documents - Plans and similar documents establishing the policies and procedures under which a records management program operates. RETENTION: US + 5 years.

1525-16 **REGISTER OF INSTRUMENTS FILED FOR RECORD (CLERK'S FILE DOCKET, FILE REGISTER, RECEPTION RECORD).** RETENTION: PERMANENT.

1525-17 **REPORTS OF COLLECTIONS (MONTHLY FEE REPORTS).** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

SECTION 2-14: MISCELLANEOUS RECORDS

1550-01 **ADOPTION STATEMENTS (AFFIDAVITS OF HEIRSHIP)** - Statements by persons that they have adopted other persons as their legal heirs.

a) Recorded statements and originals of statements that *have not been* recorded. RETENTION: PERMANENT.

b) Originals of statements that *have been* recorded. RETENTION: AV after recording. (Exempt from destruction request to the Texas State Library)

1550-02 **AUTOMOBILE REGISTER** - Register of automobiles licensed in county from 1907 to 1917. RETENTION: PERMANENT.

1550-03 **CENSUS RECORDS** - Lists of persons enumerated, mortality schedules, or other documents relating to the federal decennial censuses or any special state or county census. RETENTION: PERMANENT.

* 1550-04 **CERTIFICATES OF DEPOSIT (RECEIPTS) FOR WILLS FILED FOR SAFEKEEPING.** RETENTION: Return of will + 5 years. (Exempt from destruction request to the Texas State Library)

1550-05 **CITY BUDGETS.** RETENTION: 3 years.

1550-06 **CONFEDERATE WIDOWS' AFFIDAVITS** - Affidavits by widows of Confederate veterans attesting to their inability to obtain information on regiments or companies in which their husbands served. RETENTION: PERMANENT.

1550-07 **CROSSTIES AND STAVES PURCHASE STATEMENTS** - Purchase statements by buyers of crossties and staves for which a bill of sale was not provided by the seller. RETENTION: 2 years.

1550-07a **EMERGENCY SERVICES DISTRICT ANNUAL REPORTS.** RETENTION: PERMANENT.

1550-08 **EXPLOSIVE LICENSES, RECORDS OF** - Register or license stubs of licenses issued by authority of the U. S. Bureau of Mines for the sale, purchase, or use of explosives pursuant to provisions of the Federal Explosives Act. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1550-09 **FISH AND GAME LICENSING RECORDS** - Registers, stub books, duplicate licenses, duplicate receipts, affidavits of loss of license, and reports relating to the issuance of fish and game licenses.

a) Records in counties in which the county clerk is no longer an issuing agent. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) Records in counties in which the county clerk is an issuing agent:

1) All records dated 1985 and earlier. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2) All records dated 1986 or later. RETENTION: FE + 3 years.

1550-10 **FOOD STAMP PROGRAM RECORDS** - Documentation relating to the distribution of food stamps. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1550-11 **HEADLIGHT TESTING STATION RECORDS** - Documentation relating to headlight testing stations established by commissioners court pursuant to the Texas Headlight Act (1925). RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1550-11a **INJECTION WELLS, APPLICATIONS TO DRILL.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1550-12 **LOG BRAND RECORD.** RETENTION: PERMANENT.

1550-13 **MUNICIPAL RESOLUTIONS ADOPTING HOME RULE** - Resolutions or ordinances by municipalities ccepting municipal status under Title 28 of the Texas Civil Statutes. RETENTION: PERMANENT.

1550-14 **NOXIOUS WEED CONTROL DISTRICT ANNUAL REPORTS.** RETENTION: PERMANENT.

1550-15 **OLD AGE PENSION LISTS OR REGISTERS** - Monthly lists of persons in the county receiving old age pensions from the state. RETENTION: PERMANENT.

1550-16 **PROTEST RECORD** - Record of protest notices issued by notaries public evidencing non-payment of monies owed or non-performance of services promised. RETENTION: 10 years.

1550-17 **RECORD OF TIMBER CUT** - Recorded quarterly reports of persons who float or raft timber on rivers or creeks. RETENTION: PERMANENT.

1550-18 **REPORTS OF LIQUOR SEIZED** - Reports of liquor and associated property seized, and copies of receipts issued by the sheriff for goods if liquor or property was seized by officers other than the sheriff.

a) Receipts. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Reports. RETENTION: PERMANENT.

1550-19 **REQUESTS FOR FREE COPIES BY VETERANS** - Requests by veterans for free copies of records. RETENTION: 90 days. (Exempt from destruction request to the Texas State Library)

1550-20 **SELECTIVE SERVICE RECORDS** - All records relating to the registration of men for military service under the Selective Service and Training Act of 1940. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1550-21 **TEXAS RELIEF COMMISSION RECORDS** - Records relating to the welfare and relief activities of the exas Relief Commission. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1550-22 **WILLS FILED FOR SAFEKEEPING.** RETENTION: Until retrieved or disposed of. [In accordance with Probate Code, Section 71.]

1550-23 **WIND EROSION DISTRICT ANNUAL AUDIT REPORTS.** RETENTION: PERMANENT.

* 1550-24 **AXLE OVERWEIGHT RECORDS** - Notifications and other documents submitted by operators of vehicles granted axle overweight permits by the Texas Department of Transportation. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

PART 3: COUNTY CLERK AS CLERK OF COUNTY COURT

***Retention Notes**: a) SCOPE OF THIS PART - The term "county court" as used in the descriptions of records in this part includes not only the constitutional county courts, but also county courts at law; county civil courts at law; county criminal courts; county criminal courts at law; county courts for criminal cases; county criminal courts of appeal; probate courts; and any other county courts that may hereafter be created by statute.*

In some counties, the district clerk serves either as the exclusive clerk to one or more statutory county courts in the county, as clerk in those cases concerning family law only, or as clerk in those cases concerning both family law and those in civil and/or criminal law in which the court has concurrent jurisdiction with district courts. The district clerk must follow the minimum retention periods in this section for the records of any county court to which he or she is clerk. If the court also has concurrent jurisdiction with district courts in family law matters, the clerk must use the retention periods set down in the Local Schedule DC (Records of District Clerks) for those records relating to family law.

In some counties, the county clerk serves as exclusive clerk to a statutory county court that has been granted concurrent jurisdiction with district courts in family law matters. The county clerk should follow the retention periods in this section for civil, criminal, and probate records and those in Local Schedule DC for records concerning family law matters (e.g., Divorce Minutes).

b) MEANING OF FINAL JUDGMENT - For retention dating purposes, the use of the term "final judgment" in retention periods, unless otherwise qualified, means:

1) Civil Cases - From the date judgment rendered and signed in a county court; or if new trial or further proceedings granted on motion or mandated on appeal, from date judgment rendered and signed in new trial or further proceedings; or if appealed and judgment of trial court affirmed, modified, or rendered as it should have been rendered, or appeal dismissed, from date mandate or notice of dismissal received from appeals court; whichever applicable.

2) Criminal Cases - From the date judgment rendered and signed in a county court; or if new trial or further proceedings granted on motion or mandated by reversal on appeal, from date judgment rendered and signed in new trial or further proceedings; or if appealed and judgment of trial court affirmed or judgment of acquittal issued or appeal dismissed, from date mandate or notice of dismissal received from appeals court; whichever applicable.

3) Juvenile, Mental Illness, Mental Retardation, Alcoholism, or Narcotics Addiction Cases - State laws provide that appeals from decisions in these types of hearings shall be governed by the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure, and the dating of final judgment should follow the guidelines set out in (b)(1) above.

c) PRE-1876 RECORDS AND RETENTION RECOMMENDATIONS - Notwithstanding the retention periods set down in this schedule, the following records must be retained permanently:

1) all case papers dated 1876 or earlier and trial dockets containing entries dated 1876 or earlier; and

2) case papers and trial dockets from any period if the minutes of the case have been lost or destroyed.

In addition, with regard only to case papers in which final judgment has been rendered, this manual recommends, but does not require that consideration be given to retaining:

1) all case papers dated from 1877 to 1920 PERMANENTLY; and

2) papers in a case from any period that, because of its notoriety or significance, might possess enduring value.

** d) FINGERPRINTS - Texas Code of Criminal Procedure, art. 38.33, requires that the fingerprint of a person convicted of a Class A misdemeanor or a felony be placed on the judgment or docket sheet. This requirement applies only to convictions had on or after 1 September 1987.*

If the fingerprint appears on a judgment sheet or an order for probation that is incorporated directly into the Criminal Minutes [1600-07] or the County Court Minutes [1650-06] none of the retention periods listed in Part 3 of this schedule is affected.

but if the only copy of the fingerprint appears on a document in either of the following two categories, then the document must be retained 20 years after final judgment or after last entry, as applicable.

Category 1 - On a docket sheet in the Criminal Docket [1600-05] or the Criminal File Docket, Type IV [1600-06], or on a separate docket sheet filed with the Criminal Case Papers [1600-04].

Category 2 - On a judgment or an order for probation filed with the Criminal Case Papers [1600-04] and not directly incorporated into the Criminal Minutes [1600-07] or the County Court Minutes [1650-06].

The 20 year retention required for documents in Categories 1 and 2 apply only to those documents or portions of a docket, judgment, or order created on or after 1 September 1987 and containing the only copy of the fingerprints of convicted persons. It does not apply to any documents in the same categories created on or before 31 August 1987.

e) RETENTION OF CIVIL EXHIBITS AND DEPOSITIONS - Exhibits and depositions in civil cases must be retained and disposed of in accordance with the following orders of the Texas Supreme Court, unless a county has obtained a modified order from the Supreme Court amending the procedure for that county.

1) Exhibits: In compliance with the provisions of Rule 14b, the Supreme Court hereby directs that exhibits offered or admitted into evidence shall be retained and disposed of by the clerk of the court in which the exhibits are filed upon the following basis.

This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and, (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

After first giving all attorneys of record thirty days written notice that they have an opportunity to claim and withdraw the trial exhibits, the clerk, unless otherwise directed by the court, may dispose of the exhibits. If any such exhibit is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.

If the exhibit is not a document or otherwise capable of reproduction, the party who offered the exhibit shall be entitled to claim same; provided, however, that the party claiming the exhibit shall provide a photograph of said exhibit to any other party upon request and payment of the reasonable cost thereof by the other party.

2) Deposition Transcripts and Depositions Upon Written Questions: In compliance with the provisions of Rule 209, the Supreme Court hereby directs that deposition transcripts and depositions upon written questions be retained and disposed of by the clerk of the court in which the same are filed upon the following basis.

This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and, (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

After first giving all attorneys of record written notice that they have an opportunity to claim and withdraw the same, the clerk, unless otherwise directed by the court, may dispose of them thirty days after giving such notice. If any such document is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the document.

** f) RETENTION OF CRIMINAL EXHIBITS - Exhibits in criminal cases in which a person was convicted must be retained and disposed of in accordance with the following provisions of the Texas Code of Criminal Procedure, art. 2.21:*

1) To be eligible for disposal the exhibit must not be contraband or a firearm, must not have been ordered by the court to be returned to its owner, and is not an exhibit in another pending criminal action.

2) An eligible exhibit may be disposed of on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is five years or less; or on or after the second anniversary of the date on which a conviction becomes final in the case, if the case is a non-capital felony for which the sentence imposed by the court is greater than 5 years.

3) Prior to disposal, county and district clerks in a county with a population of less than 1.7 million must provide written notice by mail to the attorney representing the state and the attorney representing the defendant of the intent to dispose. If a request for return is not received from either attorney before the 31st day after the date of notice, the clerk may dispose of the exhibit.

4) County and district clerks in a county with a population of 1.7 million or more may dispose of an eligible exhibit on the date provided in (2) if on that date the clerk has not received a request for the exhibit from either the attorney representing the state or the attorney representing the defendant.

SECTION 3-1: CIVIL CASE RECORDS

1575-01 **APPEARANCE DOCKET (CALL DOCKET)** - Docket books or sheets of civil suits filed in a county court used to call cases on appearance day. RETENTION: 3 years.

1575-02 **CIVIL BAR DOCKET** - Docket books or sheets of civil suits filed for the use of attorneys. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1575-03 **CIVIL CASE PAPERS** - Documents relating to civil suits (including pre-trial, preliminary, or interlocutory proceedings or hearings) and of scire facias and ancillary civil proceedings, *except condemnation suits* (see 1575-07).

a) Cases dismissed on motion of plaintiff, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

* b) All other cases. *See retention note.*

Retention Notes: *a) Final judgment + 12 years or, if applicable to the case, 12 years from date judgment revived, whichever longer, provided that at the time of disposal (1) no discovery proceedings are underway in the case and (2) the judgment and mandate (if applicable) have been entered of record in a permanent minute book of the court.*

b) Prior to disposal, civil case papers shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Some civil case papers may merit permanent retention because they provide significant documentation of the history of the local community.

c) Exhibits and depositions. RETENTION: *See retention note (e) on page 35.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Transcripts and statements of fact from the county court on appeal. RETENTION: AV. (Exempt from destruction request to the Texas State Library).

* e) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* f) Appeal, cost, supersèdeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

1575-04 **CIVIL DOCKET.** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1575-05 **CIVIL FILE DOCKET (CIVIL DOCKET-PENDING)** - Original entry docket books or sheets of civil cases.

a) TYPE I - File docket, which *does not contain* an account of fees due, whose contents are *transcribed* into a docket of disposed cases after adjudication. RETENTION: AV after transcription. (Exempt from destruction request to the Texas State Library)

b) TYPE II - File docket, which *does contain* an account of fees due, whose contents, *except* those relating to fees, are *transcribed* into a docket of disposed cases after adjudication. RETENTION: FE + 5 years.

c) TYPE III - Non-transferred sheets of a file docket, which *does not contain* an account of fees due, whose sheets are *transferred* to a docket of disposed cases as the case moves from pending to disposed. RETENTION: 3 years.

d) TYPE IV - File docket, which *may or may not contain* an account of fees due, whose contents are not transcribed or whose sheets are not transferred, but which serves as a combination pending and disposed docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1575-06 **CIVIL MINUTES.** RETENTION: PERMANENT.

1575-07 **CONDEMNATION CASE PAPERS (EMINENT DOMAIN CASE PAPERS)**

a) Cases dismissed on motion of plaintiff, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

* b) All other cases. *See retention note.*

Retention Note: *Condemnation case papers must be retained for 12 years after entry of judgment approving award on the court minutes in the absence of objection or after final judgment rendered or proceedings otherwise terminated in court in trial of the cause, whichever applicable, except if suit is dismissed on motion of condemnor, the award of the special commissioners must be retained PERMANENTLY or, if it is entered of record in any subsequent suit, until the expiration of the retention period applicable to the records of that suit, whichever sooner.*

c) Exhibits and depositions. RETENTION: *See retention note (e) on page 35.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Transcripts and statements of fact from the county court on appeal. RETENTION: AV. (Exempt from destruction request to the Texas State Library).

* f) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* g) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

1575-08 **JURY DOCKET (JURY TRIAL DOCKET)** - Docket books or sheets of civil suits in which juries have been requested. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1575-09 **SUBPOENAS** - Stub books, copies, or recorded copies of civil subpoenas issued. RETENTION: 2 years.

SECTION 3-2: CRIMINAL CASE RECORDS

1600-01 **BAIL BOND RECORD** - Record of bail or recognizance bonds set or taken. RETENTION: 3 years.

1600-02 **CAPIASES** - Stub books or copies of capaises and summonses issued. RETENTION: 2 years.

1600-03 **CRIMINAL BAR DOCKET (STATE BAR DOCKET)** - Docket books or sheets of criminal cases filed for the use of attorneys. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1600-04 **CRIMINAL CASE PAPERS** - Documents relating to criminal cases.

a) DWI and DUID cases.

1) Dismissed cases or cases in which defendant acquitted. RETENTION: Date of dismissal or acquittal + 5 years, as applicable.

2) Cases in which defendant convicted. RETENTION: Final judgment + 10 years, *but see retention note (d) on page 34.*

b) All other cases. RETENTION: Date of dismissal or final judgment + 5 years, as applicable, *but see retention note (d) on page 34.*

c) Exhibits. RETENTION: *See retention note (f) on page 35.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost. RETENTION: FE of final payment + 5 years.

* e) Transcripts and statements of fact from the county court on appeal. RETENTION: Receipt of mandate + 3 years.

* f) Pre-sentence investigation reports. RETENTION: Final judgment + 2 years.

* g) Warrants, capiases, summonses, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* h) Bail, personal, appeal, peace, cost, and other surety bonds, or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

1600-05 **CRIMINAL DOCKET.** RETENTION: 5 years, *but see retention note (d) on page 34.*

1600-06 **CRIMINAL FILE DOCKET (CRIMINAL DOCKET-PENDING)** - Original entry docket books or sheets of criminal cases.

a) TYPE I - File docket, which *does not contain* an account of fees due, whose contents are *transcribed* into a Criminal Docket [1600-05] after adjudication. RETENTION: AV after transcription. (Exempt from destruction request to the Texas State Library)

b) TYPE II - File docket, which *does contain* an account of fees due, whose contents, *except* that relating to fees, are *transcribed* into a Criminal Docket [1600-05] after adjudication. RETENTION: FE + 5 years.

c) TYPE III - Non-transferred sheets of file docket, which *does not contain* an account of fees due, whose sheets are *transferred* to a Criminal Docket [1600-05] as the case moves from pending to disposed. RETENTION: 3 years.

d) TYPE IV - File docket, which *does contain* an account of fees due, whose contents *are not transcribed* or whose sheets *are not transferred,* but which serves as a combination file docket, criminal docket, and fee book. RETENTION: FE + 5 years, but see retention note (d) on page 34.

1600-07 **CRIMINAL MINUTES.** RETENTION: PERMANENT.

1600-08 **PROBATION MINUTES.** RETENTION: PERMANENT.

1600-09 **SUBPOENAS (CRIMINAL)** - Stubs books, copies, or recorded copies of subpoenas issued. RETENTION: 2 years.

1600-10 **WITNESS ATTACHMENTS** - Stub books, copies, or recorded copies of attachment writs issued. RETENTION: 2 years.

1600-11 **WITNESS RECORD (WITNESS DOCKET)** - Register of witnesses subpoenaed, attached, or recognized in criminal cases. RETENTION: 3 years.

SECTION 3-3: PROBATE RECORDS

1625-01 **ANNUAL ACCOUNT RECORD (PROBATE ACCOUNT RECORD)** - Recorded annual or final reports or exhibits of account of executors, administrators, and guardians. RETENTION: PERMANENT.

1625-02 **APPRENTICESHIP RECORD** - Record of the apprenticeship of minors. RETENTION: PERMANENT.

1625-03 **COMMUNITY PROPERTY DOCKET** - Docket books or sheets of probate cases involving the administration of community property due to the death or incompetence of a spouse. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26]

1625-04 **COMMUNITY PROPERTY MINUTES** - Record of the proceedings of the county court in cases involving the administration of community property due to the death or incompetence of a spouse. RETENTION: PERMANENT.

1625-05 **GUARDIANS' CLAIM DOCKET** - Register of claims on estates of persons under guardianship. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

625-06 **GUARDIANS' DOCKET** - Docket books or sheets of cases involving the appointment of guardians. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1625-07 **GUARDIANSHIP MINUTES (GUARDIANSHIP RECORD).** RETENTION: PERMANENT.

1625-08 **INVENTORY RECORD (PROBATE INVENTORY RECORD)** - Recorded inventories and appraisements of property in probate cases. RETENTION: PERMANENT.

1625-09 **PROBATE BOND RECORD (PROBATE BOND DOCKET)** - Recorded bonds and qualifying oaths of executors, administrators, and guardians. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

* 1625-10 **PROBATE CASE PAPERS** - Original case papers, including wills, of matters within the jurisdiction of a county court as probate court. RETENTION: PERMANENT.

1625-11 **PROBATE CLAIM DOCKET** - Register of claims against estates of decedents or of those under guardianship. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1625-12 **PROBATE DOCKET.** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1625-13 **PROBATE FILE DOCKET (PROBATE DOCKET-PENDING)** - Original entry docket books or sheets of probate cases. RETENTION: *Follow retention periods for Civil File Docket [1575-05].*

1625-14 **PROBATE MINUTES.** RETENTION: PERMANENT.

1625-15 **PROBATE RECORD (FINAL PROBATE RECORD)** - Recorded documents filed in probate cases. RETENTION: PERMANENT.

1625-16 **REPORTS OF SALE RECORD** - Recorded reports of sale of property from estates submitted by executors, administrators, or guardians. RETENTION: PERMANENT.

1625-17 **SMALL ESTATES AFFIDAVITS** - Affidavits filed by the distributees of small estates.

a) Originals of affidavits that have been recorded in the Small Estates Record [1625-19]. RETENTION: 1 year after estate settled and closed.

b) Originals of affidavits that have *not* been recorded in the Small Estates Record [1625-19]. RETENTION: PERMANENT.

1625-18 **SMALL ESTATES DOCKET** - Docket books or sheets of hearings to approve small estates affidavits. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1625-19 **SMALL ESTATES RECORD** - Recorded affidavits filed by the distributees of small estates. RETENTION: PERMANENT.

1625-20 **VITAL STATISTICS DOCKET OR MINUTES (PROBATE BIRTH DOCKET OR MINUTES; DELAYED BIRTH DOCKET OR MINUTES)** - Docket books or sheets or minutes of hearings on applications for the issuance of delayed birth or death certificates or for the issuance of certified copies of illegitimate birth certificates heard. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1625-21 **VITAL STATISTICS CASE PAPERS (PROBATE BIRTH CASE PAPERS; DELAYED BIRTH CASE PAPERS)** - Documents relating to hearings on the issuance of delayed birth or death certificates or certified copies of illegitimate birth certificates. RETENTION: 2 years from date application denied or order for registration issued.

1625-22 **WILL RECORD** - Recorded copies of wills. RETENTION: PERMANENT.

SECTION 3-4: MULTI-CASE/MULTI-COURT RECORDS

1650-01 **APPEAL RECORD (TRANSCRIPT DOCKET)** - Record or register of civil, criminal, or probate cases appealed to a higher court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1650-02 **ATTORNEYS' ORDER BOOK (CITATION RECORD)** - Record of attorneys' requests for the issuance of legal papers. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1650-03 **ATTORNEYS' RECEIPT BOOK** - Attorneys' receipts for documents temporarily withdrawn from custody of the court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1650-04 **COUNTY COURT DOCKET** - Combined form of the Civil Docket [1575-04] and the Criminal Docket [1600-05]. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1650-05 **COUNTY COURT FILE DOCKET (COUNTY COURT DOCKET-PENDING)** - Original entry docket books or sheets of civil, criminal, and probate cases. RETENTION: *Follow retention periods for Civil File Docket [1575-05].*

1650-06 **COUNTY COURT MINUTES (CIVIL AND CRIMINAL MINUTES).** RETENTION: PERMANENT.

1650-07 **DEPOSITION RECORD** - Record or register of depositions filed. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1650-08 **EXECUTION DOCKET** - Record of executions issued to enforce judgments. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1650-09 **MOTION DOCKET** - Docket books or sheets recording motions filed by attorneys.

a) Combined civil/criminal motion docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

b) Separate civil motion docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

c) Separate criminal motion docket. RETENTION: 5 years.

1650-10 **SCIRE FACIAS DOCKET (BOND FORFEITURE DOCKET).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1650-11 **SCIRE FACIAS MINUTES (BOND FORFEITURE MINUTES).** RETENTION: PERMANENT.

1650-12 **SHORTHAND NOTES OF OFFICIAL COURT REPORTERS** - Shorthand notes of official court reporters. RETENTION: Date notes taken + 3 years. [By law - Government Code, Section 52.046(a)(4).]

Retention Note: *Court reporters must, by law, retain their notes in all manner of cases for three years from the date on which they were taken. While the responsibility for preserving the notes lies with the court reporter, in many counties reporters have left office and left their notes with the county clerk or in storage in county buildings. These notes may be disposed of after the expiration of the retention period.*

SECTION 3-5: JURY RECORDS

1675-01 **JURY LISTS** - Lists of persons chosen for service in district, county, or justice courts, including lists of persons whose service has been postponed and defendants' and plaintiffs' lists. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1675-02 **JURY TIME BOOK (JURY RECORD)** - Record of persons serving on county or justice court juries. RETENTION: FE + 3 years.

1675-03 **STATEMENTS OF EXEMPTION FROM JURY DUTY** - Statements by persons claiming temporary or permanent exemption from jury duty on statutory grounds, including any statements of rescission of such claims.

a) Statements requesting permanent exemption. RETENTION: AV after notification sent to tax assessor-collector. (Exempt from destruction requirement)

b) Statements requesting temporary exemption. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

* 1675-04 **JUROR QUESTIONNAIRES** - Forms completed by jurors reporting for jury duty. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

* SECTION 3-6: JUVENILE RECORDS

*** SPECIAL NOTE: This section remains in effect until the effective date of adoption of Local Schedule JR (Juvenile Records) by the Texas State Library and Archives Commission by an amendment to 13 TAC 7.125.**

Prefatory Note: *Juvenile court records are subject to sealing pursuant to Texas Family Code, Section 51.16. While sealing restricts access to the records, it does not affect the minimum retention periods set down in this section nor the destruction of such records following the expiration of those periods.*

1700-01 **DEPENDENT JUVENILE RECORD** - Proceedings of a county court in hearings from 1907 to 1918 involving dependent or neglected children. RETENTION: PERMANENT.

1700-02 **JUVENILE CASE PAPERS** - Documents relating to juvenile detention, transfer, adjudication, or disposition proceedings, including all records transferred to the court by law enforcement or other agencies under sealing order issued by the court.

Retention Note: *The retention periods set out below are divided into two groups - those dealing with records arising from a juvenile delinquency or offense committed on or before 31 August 1987 and those dealing with records arising from a juvenile delinquency or offense committed on or after 1 September 1987. The Texas Legislature has determined that an offense occurs on or after 1 September 1987 if all the elements of the offense occur on or after that date.*

a) Records concerning delinquent conduct or offenses committed on or before 31 August 1987:

1) Fingerprint cards and photographs *only*:

A) If a petition alleging that the juvenile engaged in delinquent conduct or conduct indicating a need for supervision is not filed, the proceedings are dismissed, the juvenile is found not to have engaged in the alleged conduct, or the juvenile is found to have engaged in the conduct but has reached the age of 18 and there is *no* record that he or she committed a criminal offense after reaching the age of 17. RETENTION: Must be destroyed immediately upon fulfillment of any of the conditions listed. [By law - Family Code, Section 51.15(e) before 1987 amendment. (Exempt from destruction request to the Texas State Library)

B) If the juvenile is found to have engaged in the conduct, has reached the age of 18, but there is a record that he or she committed an offense after reaching the age of 17. RETENTION: Follow the retention period for (a)(2)(A) or (B), as applicable.

2) All other case papers:

A) If the person has reached the age of 23 and has *not* been convicted of a felony as an adult. RETENTION: *See retention note.* [By law - Family Code, Section 51.16(i).] (Exempt from destruction request to the Texas State Library)

Retention Note: *State law requires that the records can only be destroyed at this point by the court's own motion or upon a motion by the person in whose name the files or records are kept. County clerks wishing to dispose of juvenile case papers at the expiration of the retention period prescribed under these circumstances should petition the court for an order directing that the records be destroyed. County clerks may dispose of juvenile case papers on their own initiative only according to the retention period set out in (a)(2)(B).*

B) If the person has reached the age of 23 and he or she has been convicted of a felony as an adult; or if the person has reached the age of 23, has *not* been convicted of a felony as an adult, but the court on its own or another's motion has not ordered the destruction of the papers. RETENTION: Until the individual is 33.

b) Records concerning delinquent conduct or offenses committed on or after 1 September 1987:

1) Fingerprint cards and photographs *only*:

A) If a petition alleging that the juvenile engaged in delinquent conduct or conduct indicating a need for supervision is not filed, the proceedings are dismissed, or the juvenile is found not to have engaged in the alleged conduct; or the juvenile is found to have engaged in the conduct but has reached the age of 18, is not subject to commitment to the Texas Youth Commission or to transfer under a determinate sentence to the Texas Department of Corrections and there is *no* record that he or she committed a criminal offense after reaching the age of 17; or the person is older than 18 years, at least three years have elapsed after the person's release from commitment, and there is no evidence that he or she committed a criminal offense after the release. RETENTION: Must be destroyed immediately upon fulfillment of any of the conditions listed. [By law - Family Code, Section 51.15(e).] (Exempt from destruction request to the Texas State Library)

B) If the juvenile is found to have engaged in conduct involving a violation of the penal code of a grade other than a felony, has reached the age of 18, but there is a record that he or she committed an offense after reaching the age of 17. RETENTION: *Follow the retention periods in (b)(2)(A) or (B), as applicable.*

C) If the juvenile is found to have engaged in conduct involving a violation of the penal code of the grade of felony. RETENTION: *Follow the retention period in (b)(2)(C).*

2) All other case papers:

A) If the person has reached the age of 23, was adjudged delinquent based on the violation of a penal law other than the grade of felony, and has *not* been convicted of a felony as an adult. RETENTION: *See retention note.* [By law - Family Code, Section 51.16(i).] (Exempt from destruction request to the Texas State Library)

Retention Note: *State law requires that the records can only be destroyed at this point by the court's own motion or upon a motion by the person in whose name the files or records are kept. County clerks wishing to dispose of juvenile case papers at the expiration of the retention period prescribed under these circumstances should petition the court for an order directing that the records be destroyed. County clerks may dispose of juvenile case papers on their own initiative only according to the retention period set out in (2)(B) or (C).*

B) If the person has reached the age of 23, was adjudged delinquent based on the violation of a penal law other than the grade of felony, but he or she has been convicted of a felony as an adult; or if the person has reached the age of 23, has *not* been convicted of a felony as an adult, but the court on its own or another's motion has not ordered the destruction of ~~the~~ papers. RETENTION: Until the individual is 33.

C) If the case papers concern an adjudication of delinquency based on the violation of a penal law of the grade of felony. RETENTION: Date of judgment in disposition hearing + 25 years.

3) Audio or videotapes of release hearings. RETENTION: Date of final judgment in release hearing + 2 years. [By law - Family Code, Section 54.11(g).]

1700-03 **JUVENILE COURT DOCKET.** RETENTION: 5 years.

1700-04 **JUVENILE RECORD (JUVENILE COURT MINUTES).** RETENTION: PERMANENT.

SECTION 3-7: RECORDS OF COMMITMENT AND ADMISSION TO STATE CARE

1725-01 **ALCOHOLISM CASE PAPERS** - Documents relating to alcoholic commitment cases. RETENTION: 5 years after final judgment on grant or denial of petition for commitment.

1725-02 **ALCOHOLISM DOCKET.** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1725-03 **ALCOHOLISM MINUTES.** RETENTION: PERMANENT.

1725-04 **CANCER AND PELLAGRA APPLICATIONS** - Documents filed with the county judge by or on behalf of persons seeking admission to state hospitals for the treatment of cancer or pellagra. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-05 **CRIPPLED CHILDREN APPLICATIONS** - Documents filed with the county judge seeking hospitalization and medical care for crippled children. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-06 **CRIPPLED CHILDREN DOCKET.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-07 **CRIPPLED CHILDREN MINUTES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-08 **EPILEPTIC APPLICATIONS** - Documents filed with the county judge by or on behalf of persons seeking admission to the Abilene State Hospital. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-09 **EPILEPTIC DOCKET.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-10 **EPILEPTIC MINUTES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-11 **MENTAL ILLNESS CASE PAPERS (LUNACY CASE PAPERS)** - Documents relating to the temporary or extended commitment under civil or criminal law of mentally ill persons (including juveniles) heard in county court.

a) Cases in which application for commitment denied or judgment against commitment issued by court. RETENTION: Final judgment + 5 years.

b) Cases in which application for commitment granted or judgment for commitment rendered and the date of death or discharge from hospitalization or outpatient services *is* known. RETENTION: Date of death or discharge + 10 years.

c) Cases in which application for commitment granted or judgment for commitment rendered and date of death or discharge from hospitalization or outpatient services *is not* known. RETENTION: Date of commitment + 50 years.

1725-12 **MENTAL ILLNESS DOCKET (LUNACY DOCKET).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1725-13 **MENTAL ILLNESS MINUTES (LUNACY MINUTES).** RETENTION: PERMANENT.

1725-14 **MENTAL RETARDATION CASE PAPERS** - Documents relating involving the civil or criminal commitment or transfer of mentally retarded persons (including juveniles) to residential care facilities or state mental hospitals.

a) Cases in which application for commitment denied or judgment against commitment issued. RETENTION: Final judgment + 5 years.

b) Cases in which application for commitment granted or judgment for commitment rendered and date of death or discharge of the patient *is* known. RETENTION: Date of death or discharge + 10 years.

c) Cases in which application for commitment is granted or judgment for commitment rendered and date of death or discharge of the patient *is not* known. RETENTION: Date of commitment + 50 years.

1725-15 **MENTAL RETARDATION DOCKET (FEBBLEMINDED DOCKET).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1725-16 **MENTAL RETARDATION MINUTES (FEEBLEMINDED MINUTES).** RETENTION: PERMANENT.

1725-17 **NARCOTICS ADDICTION CASE PAPERS** - Documents relating to narcotics addiction commitment cases.

a) Cases in which petition for commitment denied. RETENTION: 5 years.

b) Cases in which petition for commitment granted and date of death or discharge of patient *is* known. RETENTION: Discharge of patient + 5 years.

c) Cases in which petition for commitment granted and date of death or discharge of patient *is not* known. RETENTION: Date of commitment + 10 years.

* 1725-17a **NARCOTICS ADDICTION DOCKET.** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

1725-18 **NARCOTICS ADDICTION MINUTES.** RETENTION: PERMANENT.

1725-19 **TUBERCULOSIS APPLICATIONS** - Documents filed with the county judge by or on behalf of persons seeking admission to state chest hospitals. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-20 **TUBERCULOSIS DOCKET** - Dockets books or sheets setting hearings by the county judge on tuberculosis applications. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1725-21 **TUBERCULOSIS MINUTES.** RETENTION: PERMANENT.

SECTION 3-8: NATURALIZATION RECORDS

1750-01 **DECLARATION OF INTENTION RECORD** - Bound or filed originals or recorded copies of declarations of intention to become citizens filed by aliens. RETENTION: PERMANENT.

1750-02 **NATURALIZATION PAPERS** - Petitions for naturalization, oaths of allegiance, witness affidavits, and orders granting or denying citizenship submitted by aliens or their witnesses. RETENTION: PERMANENT.

1750-03 **NATURALIZATION RECORD** - Proceedings involving naturalization. RETENTION: PERMANENT.

SECTION 3-9: LIQUOR LICENSING RECORDS

* 1775-01 **BEER AND WINE LICENSE APPLICATION RECORDS** - Applications submitted to the county judge for wine and beer retail permits or for licenses to manufacture, distribute, or sell beer within the county. RETENTION: 2 years.

1775-02 **BEER AND WINE LICENSE DOCKET** - Docket books or sheets setting hearings on applications for beer or wine licenses or permits. RETENTION: 10 years.

1775-03 **LIQUOR LICENSE APPLICATION RECORDS** - Original applications for retail malt or spiritous liquor licenses. Destroy at option. (Exempt from destruction request to the Texas State Library)

1775-04 **LIQUOR LICENSE DOCKET (LIQUOR DEALERS DOCKET)** - Docket of applications for retail malt or spiritous liquor licenses.

a) If the Liquor License Record [1775-05] for the same period *has* survived. RETENTION: Destroy at option.

b) If the Liquor License Record [1775-05] for the same period *has not* survived. RETENTION: PERMANENT.

1775-05 **LIQUOR LICENSE RECORD (LIQUOR DEALERS JUDGMENT RECORD)** - Proceedings of county court on applications for retail malt or spiritous liquor licenses. RETENTION: PERMANENT.

1775-06 **NOTICES OF APPLICATION FOR ALCOHOLIC BEVERAGE PERMITS** - Notices to the county judge from the Texas Alcoholic Beverage Commission or its predecessors of applications for permits made directly to the Commission. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

SECTION 3-10: FEE AND ADMINISTRATIVE RECORDS

1800-01 **CASH RECEIPTS** - Receipt books or copies of receipts upon payment of fees, fines, or costs in civil, criminal, probate or other cases; or for the deposit of trust funds.

a) Criminal receipts.

1) If county has an auditor. RETENTION: Transferred to auditor when all receipts issued. [By law - Code of Criminal Procedure, Section 103.011.]

2) If the county does not have an auditor. RETENTION: FE + 5 years.

b) All other county court receipts. RETENTION: FE + 3 years.

1800-02 **COST DEPOSIT RECORD** - Journal, ledger, ledger cards, or similar records of receipts to and disbursements from monies deposited with the county clerk to cover costs in civil and probate proceedings. RETENTION: FE + 5 years.

1800-03 **COURT REPORTER REPORTS** - Monthly reports submitted by court reporters to the presiding judge of a county court. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1800-04 **FEE BOOK** - Fee books or sheets showing accounts of fees or costs accrued in cases heard in a county court. RETENTION: FE + 5 years.

1800-05 *[Withdrawn, see 1800-04]*

1800-06 **JURY CERTIFICATES** - Stubs or copies of jury certificates issued. RETENTION: FE + 3 years.

1800-07 **TEXAS JUDICIAL COUNCIL, STATISTICAL REPORTS TO.** RETENTION: 3 years.

1800-08 **TRUST FUND RECORD** - Journal, ledger, or similar record of receipts to and disbursements from trust funds, including those involving restitution by persons on probation. RETENTION: FE + 5 years.

1800-09 **WITNESS AFFIDAVITS AND CERTIFICATES (WITNESS FEE CLAIMS)** - Copies or stub books of affidavits or statements by persons or assignees claiming compensation for service as witnesses. RETENTION: FE + 3 years.

SECTION 3-11: MISCELLANEOUS COURT RECORDS

1810-01 **MOTOR CARRIER CONVICTIONS, REPORTS OF RECORD OF** - Copies of reports to the State Comptroller of fines assessed and collected for violations of the Motor Carrier Act. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1810-02 **TRAFFIC CONVICTION ABSTRACTS** - Copies of abstracts submitted to the Department of Public Safety pertaining to traffic violations. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

PART 4: OFFICIAL PUBLIC RECORDS OF COUNTY CLERKS

Prefatory Note: *The Local Government Code, Section 193.008, provides that county clerks who microfilm must divide instruments received for filing, registering, or recording in classes specified by statute for recording on microfilm. The Local Government Code, Section 193.002(a), permits clerks who do not microfilm to divide and maintain instruments in the same manner. The records series titles contained in this part are those prescribed by statute.*

1820-01 **OFFICIAL PUBLIC RECORDS OF REAL PROPERTY.** RETENTION: PERMANENT.

1820-02 **OFFICIAL PUBLIC RECORDS OF PERSONAL PROPERTY AND CHATTELS.** RETENTION: PERMANENT.

1820-03 **OFFICIAL PUBLIC RECORDS OF PROBATE COURTS.** RETENTION: PERMANENT.

1820-04 **OFFICIAL PUBLIC RECORDS OF COUNTY CIVIL COURTS.** RETENTION: PERMANENT.

1820-05 **OFFICIAL PUBLIC RECORDS OF COUNTY CRIMINAL COURTS.** RETENTION: PERMANENT.

1820-06 **OFFICIAL PUBLIC RECORDS OF COMMISSIONERS COURT.** RETENTION: PERMANENT.

1820-07 **OFFICIAL PUBLIC RECORDS OF GOVERNMENTAL, BUSINESS, AND PERSONAL MATTERS.** RETENTION: PERMANENT.

1820-08 **OFFICIAL PUBLIC RECORDS** - A combination of Official Records of Real Property [1820-01] and Official Public Records of Governmental, Business, and Personal Matters [1820-07]. RETENTION: PERMANENT.

PART 5: RECORDS OF THE COUNTY SURVEYOR

Prefatory Note: *State law provides that when the office of county surveyor is vacant or has been abolished the county clerk shall take custody of the records of the county surveyor and assume the recording duties of that office.*

SECTION 5-1: SURVEY RECORDS

1825-01 **AFFIDAVITS OF LOSS OR DESTRUCTION OF FIELD NOTES.** RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

1825-02 **ENCLOSED SCHOOL LAND REPORTS** - Copies of annual reports to commissioners court on number of sections of school land sold and enclosed during the year in county. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1825-03 **FIELD NOTES** - Original field notes of surveys of public land. RETENTION: PERMANENT.

> ***Retention Note:*** *If it is determined that the field notes have been recorded in the Survey Record [1825-06] and sets of such original field notes have been sent to the General Land Office or to the agencies, persons, or companies that ordered the survey as required by law or dictated by the customary practices of surveying, the field notes may be destroyed at option and are exempt from destruction request to the Texas State Library. Rough field notes or other notes or papers used in the preparation of formal field notes may also be destroyed at option and are also exempt.*

1825-04 **MAPS AND PLATS** - Maps of county lands and rights of way, plats and profiles of surveys, and all other maps and plats used or created by the county surveyor.

a) Plats and maps that *are* recorded in the Survey Record [1825-06] or the Plat Record [1275-17]. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) Plats and maps that *are not* recorded in the Survey Record [1825-06] or the Plat Record [1275-17]. RETENTION: PERMANENT.

1825-05 **RECORD OF APPLICATIONS FOR SURVEY, LEASE, OR PURCHASE OF PUBLIC LANDS** - Recorded applications and supporting documentation for the survey, lease, or purchase of public land. RETENTION: 2 years.

1825-06 **SURVEY RECORD (RECORD OF FIELD NOTES)** - Recorded copies of field notes and plats of surveys of public land. RETENTION: PERMANENT.

SECTION 5-2: FEE AND ADMINISTRATIVE RECORDS

1850-01 **ANNUAL FEE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1850-02 **CASH RECEIPTS.** RETENTION: FE + 3 years.

1850-03 **DAILY CASH BOOK OR REPORTS.** RETENTION: FE + 3 years.

1850-04 **DEPOSIT WARRANTS** - Copies of deposit warrants issued by the county clerk or the county treasurer for monies deposited in any funds or accounts of the county surveyor. RETENTION: FE + 3 years.

1850-05 **FEE BOOK.** RETENTION: FE + 5 years.

1850-06 **LEGAL OPINIONS** - Copies of legal opinions rendered to the county surveyor by the county attorney or the district attorney. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1850-07 **MONTHLY EXPENSE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

1850-08 *[Withdrawn]*

* 1850-09 **OPEN RECORDS REQUESTS** - Written open records requests, including those sent by electronic mail or facsimile, submitted to a county surveyor, including correspondence and other documentation relating to the requests.

a) Approved requests. RETENTION: Approval of request + 1 year. [Exempt from destruction request to the Texas State Library]

b) Denied requests. RETENTION: Denial of request + 2 years.

1850-10 **RECORDS MANAGEMENT RECORDS**

a) Records control schedules (including all successive versions of or amendments to schedules). RETENTION: PERMANENT.

b) Records destruction documentation - Records documenting the destruction of records under records control schedules, including requests submitted to the Texas State Library and Archives Commission for authorization to destroy unscheduled records or the originals of permanent records that have been microfilmed. RETENTION: PERMANENT.

c) Records inventories - Lists or inventories of the active and inactive records created or received by a county office. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

d) Records management plans and policy documents - Plans and similar documents establishing the policies and procedures under which a records management program operates. RETENTION: US + 5 years.

1850-11 **REPORTS OF COLLECTIONS (MONTHLY FEE REPORTS).** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

PART 6: RECORDS OF THE COUNTY SUPERINTENDENT OF SCHOOLS AND COUNTY BOARDS OF SCHOOL TRUSTEES [ABOLISHED OFFICES AND BOARDS ONLY]

Prefatory Note: *Texas Education Code, Section 17.95, effective 31 December 1978, abolished the county board of school trustees and the office of county superintendent of schools in counties without common or rural school districts. The board and/or the office can be continued through ad valorem taxation or by contract among the independent school districts of a county.*

This schedule applies only to the records of boards and offices abolished 31 December 1978 or earlier. For records of active offices of the county superintendent of schools see Local Schedule SD (Records of Public School Districts).

The retention periods set down in this section must be followed by the county clerk, the county judge, the county treasurer, or any other county officer who has custody of any of the records of abolished offices listed in this section.

SECTION 6-1: RECORDS OF PROCEEDINGS

1875-01 **ELECTION RECORD (SCHOOL TRUSTEES).** RETENTION: PERMANENT.

1875-02 **MINUTES OF THE COUNTY BOARD OF SCHOOL TRUSTEES.** RETENTION: PERMANENT.

1875-03 **NOTICES OF COUNTY BOARD OF SCHOOL TRUSTEES MEETINGS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1875-04 **NOTICES OF COUNTY BOARD OF SCHOOL TRUSTEES MEETINGS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1875-05 **RECORD OF SCHOOL DISTRICTS** - Proceedings of the county board of school trustees or commissioners court establishing school district boundaries, including petitions, plats, and survey field notes. RETENTION: PERMANENT.

Retention Note: *Original survey field notes of school district boundaries or of other surveys relating to schools found among the records of the county superintendent of schools may be destroyed at option provided that they have been properly recorded in the Minutes of the County Board of School Trustees [1875-02] or in either of the Records of School Districts [1875-02]. If they have not been properly recorded in any of those records they should be retained PERMANENTLY.*

1875-06 **SCHOOL DISTRICT BOARD MINUTES** - Proceedings of the boards of trustees of independent, common, or rural school districts in the county that through dissolution or by other means passed to the custody of the county superintendent of schools. RETENTION: PERMANENT.

1875-07 **SCHOOL TRUSTEE REGISTER** - Register, record, or lists of school trustees and board officers in the county. RETENTION: PERMANENT.

SECTION 6-2: FINANCIAL RECORDS

1900-01 **ACCOUNT JOURNALS** - Account books or journals of original entry detailing receipts to, disbursements from, or encumbrances involving school funds or accounts. RETENTION: Destroy at option.

1900-02 **ACCOUNTS PAYABLE RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-03 **ANNUAL AUDIT REPORTS OF SCHOOL DISTRICTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-04 **ANNUAL STATEMENTS OF SCHOOL FUNDS (ANNUAL REPORTS OF COUNTY SCHOOL ACCOUNTS; ANNUAL FINANCIAL REPORTS OF COUNTY SCHOOLS).** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-05 **ASSESSMENT ABSTRACTS** - Abstracts of property assessments in school districts under the administration of the county superintendent of schools. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-06 **BANKING RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

* 1900-07 **BOND REGISTERS.** RETENTION: Destroy at option.

> ***Retention Note:*** *Prior to disposal, bond registers shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Older bond registers from a time when the government itself or a local bank handled the issuance and payment of bonds often contain the names of local residents who subscribed to the bond issue. These registers usually merit permanent retention for historical reasons.*

1900-08 **BONDS AND COUPONS** - Canceled or unsold bonds, coupons, and similar instruments of paid bonded indebtedness. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-09 **BUDGET REQUESTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-10 **CASH RECEIPTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-11 *[Withdrawn, see 1900-20]*

1900-12 **DEPOSIT WARRANTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-13 **FEDERAL AND STATE TAX FORMS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-14 **OFFICE AND TRAVEL EXPENSE REPORTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-15 **OFFICIAL BUDGETS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-16 **PAYROLL REGISTERS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-17 **REPORT OF SCHOOL DISTRICT TAXES COLLECTED.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-18 **RETIREMENT RECORD** - Record book or account sheets of teacher or other school employee retirement and/or federal withholding tax deductions. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-19 **RETIREMENT REPORTS** - Copies of pay period or other reports submitted by the county superintendent of schools to the Texas Teacher Retirement System detailing retirement deductions. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1900-20 **SCHOOL FUND LEDGER (SCHOOL LEDGER, ACCOUNTS WITH SCHOOL DISTRICTS, COUNTY SUPERINTENDENT'S SCHOOL RECORD, SUPERINTENDENT'S SCHOOL RECORD, COUNTY JUDGE'S SCHOOL RECORD)** - General account ledger maintained by the county superintendent of schools showing apportionment to and receipts and disbursements from all school funds or accounts under his control. RETENTION: Destroy at option.

> ***Retention Note:*** *It is an exception to the retention given that if any volume of a school fund ledger contains lists of persons applying for teaching certificates by examination or of trustees and teachers in each district, information on the location of schoolhouses, or recorded copies of the orders of the county board of school trustees affecting school finances it must be retained PERMANENTLY.*

SECTION 6-3: STUDENT RECORDS

1925-01 **ACHIEVEMENT TESTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1925-02 **BIRTH CERTIFICATES** - Copies of birth certificates of students filed by parents or guardians for enrollment or other purposes. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1925-03 **CENSUS FORMS** - Original census forms filled out for each family having children of school age.

a) All census forms dated 1948 or earlier. RETENTION: PERMANENT.

b) All census forms dated 1949 or later:

1) Forms for any year from 1949 to 1970 for which a Consolidated Scholastic Census [1925-04] *exists.* RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2) Forms for any year from 1949 to 1970 for which a Consolidated Scholastic Census [1925-04] *does not exist.* RETENTION: PERMANENT.

1925-04 **CONSOLIDATED SCHOLASTIC CENSUS ROLLS** - Consolidated census rolls of students enrolled in county schools. RETENTION: PERMANENT.

1925-05 **CUMULATIVE SCHOLASTIC RECORD (PERMANENT GRADE RECORD, PERMANENT SCHOOL RECORD, PERMANENT GRADE SHEETS)** - Record books, cards, or sheets showing academic achievement record of each student enrolled in county schools.

a) For students in grades Pre-K through 8. RETENTION: Destroy at option.

b) For students in grades 9-12. RETENTION: PERMANENT.

1925-06 **SCHOOL CENSUS RECORDS** - Registers or lists of children of school age resident in county compiled from 1854 to 1905. RETENTION: PERMANENT.

1925-07 **STUDENT HEALTH RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1925-08 **STUDENT TRANSFER RECORDS** - Registers or other records documenting the transfer of students between school districts within a county or with districts in adjoining counties. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

SECTION 6-4: ATTENDANCE AND ENROLLMENT RECORDS

1950-01 **ATTENDANCE OFFICERS' RECORD** - Register or list of children of school age who are not attending public or private schools in violation of compulsory attendance laws. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1950-02 **DAILY ATTENDANCE SHEETS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1950-03 **PRINCIPALS' PERIOD REPORTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1950-04 **SUPERINTENDENT'S ANNUAL REPORTS** - Superintendent's annual reports on school enrollment. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1950-05 **TEACHERS' DAILY REGISTER (DAILY REGISTER OF PUPIL ATTENDANCE).** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1950-06 **TEACHERS' MONTHLY OR PERIOD REPORTS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

SECTION 6-5: PERSONNEL RECORDS

1975-01 **COUNTY INSTITUTE ATTENDANCE, RECORD OF** - Record of attendance by teachers at county teaching institutes. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1975-02 **PERSONNEL RECORDS** - Employment records of teachers and non-teaching personnel of the county school system, including:

* a) The Teacher Service Record Card and any similar record for non-teaching personnel, on Texas Education Agency or comparable forms, that provide, in summary, a record of the person's employment history in the county school system. RETENTION: Termination of employment + 75 years.

b) All other personnel records. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1975-03 **REGISTRATION CARDS OF SCHOOL EMPLOYEES.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1975-04 **TEACHERS APPLYING FOR EXAMINATION, RECORDS OF** - Registers of persons applying for teacher certification by examination before county boards of examiners.

a) Registers of persons applying for teaching certificates by examination maintained in the School Fund Ledger [1900-20] or separately. RETENTION: PERMANENT.

b) All other documents relating to the examination of persons applying for teaching certificates. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

1975-05 **TEACHERS' CERTIFICATE REGISTER** - Abstracts or recorded copies of teachers' certificates of teachers working in county schools. RETENTION: PERMANENT.

SECTION 6-6: MISCELLANEOUS RECORDS

2000-01 **DEEDS** - Deeds to school property. RETENTION: PERMANENT.

2000-02 **FEDERAL AND STATE SCHOOL AID RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2000-03 **INSURANCE RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2000-04 **OPEN RECORDS APPLICATIONS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2000-05 **TEXTBOOK RECORDS.** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2000-06 **TRANSPORTATION RECORDS (SCHOOL BUS RECORDS).** RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2000-07 **VETERANS VOCATIONAL SCHOOL RECORDS** - Records of veterans vocational schools established in county.

a) Proceedings of the board of trustees of the vocational school. RETENTION: PERMANENT.

b) All other records, *including* academic records. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

Comments or complaints regarding the programs and services of the Texas State Library and Archives Commission can be addressed to the Director and Librarian, PO Box 12927, Austin, TX 78711-2927. 512-463-5460 or 512-463-5436 Fax

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Effective October 20, 1997

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL SCHEDULE DC (2nd Edition)

RETENTION SCHEDULE FOR RECORDS OF DISTRICT CLERKS

This schedule establishes mandatory minimum retention periods for the records listed. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period for a record that is less than that established for the record on this schedule. The originals of records listed in this schedule may be disposed of prior to the expiration of the stated minimum retention period if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under authority of those chapters. Actual disposal of such records by a local government or an elective county office is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under its authority, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Open Records Act (Government Code, Chapter 552).

INTRODUCTION

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed; and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

Local Schedule DC sets mandatory minimum retention periods for records series (identified in the Records Series Title column) maintained by district clerks. If the retention period for a record is established in a federal or state law, rule of court, or regulation, a citation to the relevant provision is given; if no citation is given, the authority for the retention period is this schedule.

The retention period for a record applies to the record regardless of the medium in which it is maintained. Some records listed in this schedule are maintained electronically in many offices, but electronically stored data used to create in any manner a record or the functional equivalent of a record as described in this schedule must be retained, along with the hardware and software necessary to access the data, for the retention period assigned to the record, unless backup copies of the data generated from electronic storage are retained in paper or on microfilm for the retention period.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period, again unless otherwise noted, applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

If a record described in this schedule is maintained in a bound volume of a type in which pages are not designed to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is *less than permanent* may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is *permanent* on this schedule, authority to dispose of the damaged record must be obtained from the director and librarian of the Texas State Library. The Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Requests for Authority to Destroy Unscheduled Records (SLR 501), whose submission to the director and librarian of the Texas State Library is required by the Local Government Code, Section 203.045, need not be filed for records shown as exempt from the requirement.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described. Although AV may be used as a retention period on a records control schedule of a local government, it is in the best interests of any records management program that fixed retention periods be assigned for each records series. AV records tend to accumulate and go unmanaged.

AMENDMENT NOTICE

An item number that is preceded by an asterisk (*) indicates either that the retention period or the description of the record series has been changed from that which appeared in the edition of Local Schedule DC, effective November 1, 1994, or the records series is new to this schedule. An asterisk is also used before a retention note that has been amended or added at the beginning of the schedule or any or its parts or sections. Changes to legal citations or non-substantive editorial changes are not noted.

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ABBREVIATIONS USED IN THIS SCHEDULE

AR - After release, replacement, termination, or cancellation of the instrument; or, if recorded, of all instruments in volume
AV - As long as administratively valuable
FE - Fiscal year end
US - Until superseded

RECORDS OF DISTRICT CLERKS

Retention Notes: *a) TEXAS COUNTY RECORDS MANUAL RENDERED WITHOUT EFFECT - The adoption and issuance of the first edition of this schedule by the Texas State Library and Archives Commission rendered without effect Section 2 of Volume II of the Texas County Records Manual as amended through February 15, 1993. District clerks should not use any part of the Texas County Records Manual to determine minimum retention periods or the requirements of local government records laws.*

b) USE OF LOCAL SCHEDULE GR (Records Common to All Governments) - Class 1000 (General Records), which was part of Volume II of the Texas County Records Manual, is not included in this schedule. District clerks should use Local Schedule GR for determining minimum retention periods for administrative, personnel, financial, and support service records not included in this schedule.

c) DESTROY AT OPTION - The term "destroy at option" as used throughout this schedule indicates that the record is an obsolete record no longer required by law to be maintained by district clerks. We recommend that district clerks who wish to retain these records rather than destroy them assign definite retention periods for the records on their records control schedules.

d) SCOPE OF THIS PART - In some counties, the district clerk, by law, serves either as the exclusive clerk to one or more statutory county courts, as clerk in cases concerning family law only, or as clerk in cases concerning family law and in civil and/or criminal cases in which the court has concurrent jurisdiction with district courts. The district clerk must follow the minimum retention periods in Local Schedule CC (Records of County Clerks) for records of any county court at law to which he or she is clerk that are not covered in this schedule. The district clerk must follow the retention periods in this volume for records relating to family law matters heard in a county court at law to which he is clerk.

e) MEANING OF FINAL JUDGMENT - For retention dating purposes, the use of the term "final judgment" in retention periods, unless otherwise qualified, means:

> *1) Civil and Family Law Cases - From the date judgment signed in a district court or the court of jurisdiction if a foreign judgment; or if new trial or further proceedings granted on motion or mandated on appeal, from date judgment rendered and signed in new trial or further proceedings; or if appealed and judgment of trial court affirmed, modified, or rendered as it should have been rendered, or appeal dismissed, from date mandate or notice of dismissal received from appeals court; whichever applicable.*
>
> *2) Criminal Cases - From the date judgment signed in a district court; or if new trial or further proceedings granted on motion or mandated by reversal on appeal, from date judgment rendered and signed in new trial or further proceedings; or if appealed and judgment of trial court affirmed or judgment of acquittal issued or appeal dismissed, from date mandate or notice of dismissal received from appeals court; whichever applicable.*
>
> *3) Juvenile Cases - State laws provide that appeals from decisions in these types of hearings shall be governed by the Rules of Civil Procedure and the Rules of Appellate Procedure, and the dating of final judgment should follow the guidelines set out in (e)(1) above.*

f) <u>PRE-1876 RECORDS AND RETENTION RECOMMENDATIONS</u> - Notwithstanding the retention periods set down in this schedule, the following records must be retained permanently:

> *1) all case papers dated 1876 or earlier and trial dockets containing entries dated 1876 or earlier; and*
>
> *2) case papers and trial dockets from any period if the minutes of the case have been lost or destroyed.*

In addition, with regard only to case papers in which final judgment has been rendered, this manual recommends, but does not require that consideration be given to retaining:

> *1) all case papers dated from 1877 to 1920 PERMANENTLY; and*
>
> *2) papers in a case from any period that, because of its notoriety or significance, might possess enduring value.*

** g) FINGERPRINTS - Code of Criminal Procedure, art. 38.33, requires that the fingerprint of a person convicted of a Class A misdemeanor or a felony be placed on the judgment or docket sheet. The fingerprint is meant to serve as an aid to the identification of a person for use as evidence of prior convictions. The amended article applies only to convictions had on or after 1 September 1987. Because of the long retention periods set for the various records concerning felony cases in this section, this note is concerned only with* **misdemeanor** *records in district courts.*

If the fingerprint appears on a misdemeanor judgment sheet or an order for probation that is incorporated directly into the Criminal Minutes [2125-08] or the District Court Minutes [2150-07] none of the retention periods listed in this manual is affected, but if the only copy of the fingerprint appears on a document in either of the following two categories, then the document must be retained 20 years after final judgment or after last entry as applicable.

> *Category 1 - On a misdemeanor docket sheet in the Criminal Docket [2125-06] or the Criminal File Docket - Type IV [2125-07], or on a separate docket sheet filed with the Criminal Case Papers [2125-05].*
>
> *Category 2 - On a misdemeanor judgment or an order for probation filed with the Criminal Case Papers [2125-05] and not directly incorporated into the Criminal Minutes [2125-08] or the District Court Minutes [2150-07].*

The 20 year retention required for documents in Categories 1 and 2 apply only to those documents or portions of a docket, judgment, or order created on or after 1 September 1987 and containing the only copy of the fingerprints of convicted persons. It does not apply to any documents in the same categories created on or before 31 August 1987.

h) <u>RETENTION OF CIVIL EXHIBITS AND DEPOSITIONS</u> - Exhibits and depositions in civil cases must be retained and disposed of in accordance with the following orders of the Texas Supreme Court, unless a county has obtained a modified order from the Supreme Court amending the procedure for that county.

> *1) Exhibits: In compliance with the provisions of Rule 14b, the Supreme Court hereby directs that exhibits offered or admitted into evidence shall be retained and disposed of by the clerk of the court in which the exhibits are filed upon the following basis.*
>
> *This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and, (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.*
>
> *After first giving all attorneys of record thirty days written notice that they have an opportunity to claim and withdraw the trial exhibits, the clerk, unless otherwise directed by the court, may dispose of the exhibits. If any such exhibit is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.*
>
> *If the exhibit is not a document or otherwise capable of reproduction, the party who offered the exhibit shall be entitled to claim same; provided, however, that the party claiming the exhibit shall provide a photograph of said exhibit to any other party upon request and payment of the reasonable cost thereof by the other party.*
>
> *2) Deposition Transcripts and Depositions Upon Written Questions: In compliance with the provisions of Rule 209, the Supreme Court hereby directs that deposition transcripts and depositions upon written questions be retained and disposed of by the clerk of the court in which the same are filed upon the following basis.*
>
> *This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and, (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.*
>
> *After first giving all attorneys of record written notice that they have an opportunity to claim and withdraw the same, the clerk, unless otherwise directed by the court, may dispose of them thirty days after giving such notice. If any such document is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the document.*

* *i) RETENTION OF CRIMINAL EXHIBITS - Exhibits in criminal cases in which a person was convicted must be retained and disposed of in accordance with the following provisions of the Code of Criminal Procedure, art. 2.21:*

1) To be eligible for disposal the exhibit must not be contraband or a firearm, must not have been ordered by the court to be returned to its owner, and is not an exhibit in another pending criminal action.

2) An eligible exhibit may be disposed of on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is five years or less; or on or after the second anniversary of the date on which a conviction becomes final in the case, if the case is a non-capital felony for which the sentence imposed by the court is greater than 5 years.

3) Prior to disposal, county and district clerks in a county with a population of less than 1.7 million must provide written notice by mail to the attorney representing the state and the attorney representing the defendant of the intent to dispose. If a request for return is not received from either attorney before the 31st day after the date of notice, the clerk may dispose of the exhibit.

4) County and district clerks in a county with a population of 1.7 million or more may dispose of an eligible exhibit on the date provided in (2) if on that date the clerk has not received a request for the exhibit from either the attorney representing the state or the attorney representing the defendant.

PART 1: CIVIL CASE RECORDS

2025-01 **APPEARANCE DOCKET (CALL DOCKET)** - Docket books or sheets of civil suits filed in a district court used to call cases on appearance day. RETENTION: 3 years.

2025-02 **CIVIL BAR DOCKET** - Docket books or sheets of civil suits filed for the use of attorneys. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2025-03 **CIVIL CASE PAPERS** - Documents relating to civil proceedings (including pre-trial, preliminary, or interlocutory proceedings or hearings) and of scire facias and ancillary civil proceedings, *except* condemnation, family law, and juvenile delinquency cases, heard or received as a foreign judgment.

a) Cases dismissed on motion of plaintiff, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

* b) All other cases. *(See retention note.)*

***Retention Notes:** a) Final judgment + 20 years or, if applicable to the case, 12 years from date judgment revived, whichever longer, provided that at the time of disposal (1) no discovery proceedings are underway in the case and (2) the judgment and mandate (if applicable) have been entered of record in a permanent minute book of the court.*

b) Prior to disposal, civil case papers shall be appraised by the records management officer for historical value and those determined by the records management officer to merit retention for historical reasons must be retained permanently. Some civil case papers may merit permanent retention because they provide significant documentation of the history of the local community or the state.

c) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Transcripts and statements of fact from the district court on appeal. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

* f) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* g) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2025-04 **CIVIL DOCKET (CIVIL DOCKET-DISPOSED).** RETENTION: PERMANENT.

2025-05 **CIVIL FILE DOCKET (CIVIL DOCKET-PENDING)** - Original entry docket books or sheets of civil cases.

a) TYPE I - File docket, which *does not contain* an account of fees due, whose contents are *transcribed* into a docket of disposed cases after adjudication. RETENTION: AV after transcription. (Exempt from destruction request to the Texas State Library)

b) TYPE II - File docket, which *does contain* an account of fees due, whose contents, *except* those relating to fees, are *transcribed* into a docket of disposed cases after adjudication. RETENTION: FE + 5 years.

c) TYPE III - Non-transferred sheets of a file docket, which *does not contain* an account of fees due, whose sheets are *transferred* to a docket of disposed cases as the case moves from pending to disposed. RETENTION: 3 years.

d) TYPE IV - File docket, which *may or may not contain* an account of fees due, whose contents are not transcribed or whose sheets are not transferred, but which serves as a combination pending and disposed docket. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2025-06 **CIVIL MINUTES.** RETENTION: PERMANENT.

2025-07 **CONDEMNATION CASE PAPERS (EMINENT DOMAIN CASE PAPERS)**

a) Cases dismissed on motion of plaintiff, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

b) All other cases. *(See retention note.)*

> ***Retention Note:*** *Condemnation case papers must be retained for 10 years after entry of judgment approving award of special commissioners on the minutes of the court in the absence of objection or after final judgment rendered or proceedings otherwise terminated in court in trial of the cause, whichever applicable, except if suit is dismissed on motion of condemnor, the award of the special commissioners must be retained PERMANENTLY or, if it is entered of record in any subsequent suit, until the expiration of the retention period applicable to the records of that suit, whichever sooner.*

c) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* f) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2025-08 **JURY DOCKET (JURY TRIAL DOCKET)** - Docket books or sheets of civil suits in which juries have been requested. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2025-09 **SUBPOENAS** - Stub books, copies, or recorded copies of civil subpoenas issued. RETENTION: 2 years.

PART 2: TAX SUIT RECORDS

2050-01 **CIVIL BAR DOCKET** - Docket books or sheets of delinquent tax suits filed for the use of attorneys. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2050-02 **DELINQUENT TAX CASE PAPERS** - Documents relating to delinquent tax cases. RETENTION: *Follow retention periods for Civil Case Papers [2025-03].*

2050-03 **DELINQUENT TAX DOCKET (DELINQUENT TAX DOCKET-DISPOSED).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2050-04 **DELINQUENT TAX FILE DOCKET (DELINQUENT TAX DOCKET-PENDING)** - Original entry docket books or sheets of delinquent tax cases. RETENTION: *Follow retention periods for Civil File Docket [2025-05].*

2050-05 **DELINQUENT TAX MINUTES.** RETENTION: PERMANENT.

2050-06 **ORDER OF SALE RECORD (ORDER OF SALE DOCKET)** - Recorded orders of sale arising from judgments in delinquent tax suits. RETENTION: PERMANENT.

PART 3: FAMILY LAW CASE RECORDS

2075-01 **ADOPTION CASE PAPERS** - Documents relating to adoption, annulment of adoption, and revocation of adoption proceedings.

a) Cases dismissed on motion of petitioner, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

b) All other cases. RETENTION: PERMANENT.

c) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* f) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2075-02 **ADOPTION DOCKET (ADOPTION DOCKET-DISPOSED).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2075-03 **ADOPTION FILE DOCKET (ADOPTION DOCKET-PENDING)** - Original entry docket books or sheets of adoption, annulment of adoption, and revocation of adoption cases. RETENTION: *Follow retention periods for Civil File Docket [2025-05].*

2075-04 **ADOPTION MINUTES (ADOPTION RECORD).** RETENTION: PERMANENT.

2075-05 **CHILD SUPPORT CASE PAPERS** - Documents relating to proceedings involving child support, the enforcement of child support, or custody of a child.

a) Cases dismissed on motion of petitioner, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

b) All other cases. *(See retention note.)*

Retention Note: Final judgment + 20 years or 3 years after date on which child support obligation ends pursuant to decree of order, whichever later; except if a judgment is rendered against obligor for arrearages, follow the retention period for Civil Case Papers [2025-03(b)].

c) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* f) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2075-06 **CHILD SUPPORT DOCKET (CHILD SUPPORT DOCKET-DISPOSED).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2075-07 **CHILD SUPPORT FILE DOCKET** - Original entry docket books or sheets of cases involving child support, enforcement of child support, or custody of a child. RETENTION: *Follow retention periods for Civil File Docket [2025-05].*

2075-08 **CHILD SUPPORT MINUTES.** RETENTION: PERMANENT.

2075-09 **COMMUNITY PROPERTY MANAGEMENT PETITIONS** - Ex parte petitions of one spouse for the sole management of community property or the sale without joinder of homesteads.

a) Granted petitions. RETENTION: PERMANENT.

b) Denied petitions. RETENTION: 10 years.

2075-10 **DIVORCE CASE PAPERS** - Documents relating to divorce or annulment suits.

a) Cases dismissed on motion of petitioner, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

b) Cases in which a final decree is rendered.

1) Custody of support of a minor child is not at issue. RETENTION: *Follow retention period for Civil Case Papers [2025-03b].*

2) Custody or support of minor child is at issue. RETENTION: *Follow retention period for Child Support Case Papers [2075-05b].*

c) Cases in which petition for divorce or annulment denied. RETENTION: Final judgment + 10 years.

d) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* e) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* f) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* g) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2075-11 **DIVORCE DOCKET (DIVORCE DOCKET-DISPOSED).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2075-12 **DIVORCE FILE DOCKET (DIVORCE DOCKET-PENDING)** - Original entry docket books or sheets of divorce and annulment suits. RETENTION: *Follow retention periods for Civil File Docket [2025-05].*

2075-13 **DIVORCE MINUTES.** RETENTION: PERMANENT.

2075-14 **NAME CHANGE PETITIONS**

a) Granted petitions. RETENTION: PERMANENT.

b) Denied petitions. RETENTION: 10 years.

2075-15 **NEGLECTED CHILDREN CASE PAPERS (CHILD WELFARE CASE PAPERS)** - Documents relating to proceedings involving neglected, abandoned, and abused children. RETENTION: *Follow retention periods for Child Support Case Papers [2075-05].*

2075-16 **NEGLECTED CHILDREN DOCKET (NEGLECTED CHILDREN DOCKET-DISPOSED)** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2075-17 **NEGLECTED CHILDREN FILE DOCKET (CHILD WELFARE FILE DOCKET)** - Original entry docket books or sheets of cases involving neglected, abandoned, or abused children. RETENTION: *Follow retention periods for Civil File Docket [2025-05].*

2075-18 **NEGLECTED CHILDREN MINUTES (CHILD WELFARE MINUTES).** RETENTION: PERMANENT.

2075-19 **STATE CUSTODY DECREE RECORDS** - Certified copies of out-of-state custody decrees, including any correspondence or other documentation concerning the pendency of custody proceedings in other states. RETENTION: Final judgment + 20 years or 3 years after child support obligations ends by order or decree, whichever later.

2075-20 **PATERNITY SUIT CASE PAPERS** - Documents relating to proceedings in pre-trial conferences and trials to determine paternity.

a) Cases dismissed on motion of petitioner, for want of prosecution, or for other reasons within the court's power. RETENTION: Dismissal + 3 years.

b) Cases in which final judgment is rendered.

1) Alleged father is determined to be the father of the child. RETENTION: PERMANENT.

2) Alleged father is determined not to be the father of the child. RETENTION: Final judgment + 10 years.

c) Exhibits and depositions. RETENTION: *See retention note (h) on page 5.* (Exempt from destruction request to the Texas State Library)

* d) Bills of cost under both (a) and (b). RETENTION: FE of final payment + 3 years.

* e) Citations, waivers of citation, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* f) Appeal, cost, supersedeas, or similar surety bonds or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2075-21 **REMOVAL OF DISABILITIES PETITIONS** - Ex parte petitions for the removal of the disabilities of minority. RETENTION: 10 years.

2075-22 **VOLUNTARY LEGITIMATION PETITIONS AND STATEMENTS** - Ex parte petitions and statements of paternity for the voluntary legitimation of a child. RETENTION: PERMANENT.

* PART 4: JUVENILE RECORDS

*** SPECIAL NOTE: This section remains in effect until the effective date of adoption of Local Schedule JR (Juvenile Records) by the Texas State Library and Archives Commission by an amendment to 13 TAC 7.125.**

Prefatory Note: *Juvenile court records are subject to sealing pursuant to Texas Family Code, Section 51.16. While sealing restricts access to the records, it does not affect the minimum retention periods set down in this section nor the destruction of such records following the expiration of those periods.*

2100-01 **JUVENILE CASE PAPERS** - Documents relating to juvenile detention, transfer, adjudication, or disposition proceedings, including all records transferred to the court by law enforcement or other agencies under sealing order issued by the court.

Retention Note: *The retention periods set out below are divided into two groups - those dealing with records arising from a juvenile delinquency or offense committed on or before 31 August 1987 and those dealing with records arising from a juvenile delinquency or offense committed on or after 1 September 1987. The Texas Legislature has determined that an offense occurs on or after 1 September 1987 if all the elements of the offense occur on or after that date.*

a) Records concerning delinquent conduct or offenses committed on or before 31 August 1987:

1) Fingerprint cards and photographs *only*:

A) If a petition alleging that the juvenile engaged in delinquent conduct or conduct indicating a need for supervision is not filed, the proceedings are dismissed, the juvenile is found not to have engaged in the alleged conduct, or the juvenile is found to have engaged in the conduct but has reached the age of 18 and there is *no* record that he or she committed a criminal offense after reaching the age of 17. RETENTION: Must be destroyed immediately upon fulfillment of any of the conditions listed. [By law - Family Code, Section 51.15(e) before 1987 amendment.] (Exempt from destruction request to the Texas State Library)

B) If the juvenile is found to have engaged in the conduct, has reached the age of 18, but there is a record that he or she committed an offense after reaching the age of 17. RETENTION: *Follow the retention period for (a)(2)(A) or (B), as applicable.*

2) All other case papers:

A) If the person has reached the age of 23 and has *not* been convicted of a felony as an adult. RETENTION: *See retention note.* [By law - Family Code, Section 51.16(i). (Exempt from destruction request to the Texas State Library)

Retention Note: *State law requires that the records can only be destroyed at this point by the court's own motion or upon a motion by the person in whose name the files or records are kept. District clerks wishing to dispose of juvenile case papers at the expiration of the retention period prescribed under these circumstances should petition the court for an order directing that the records be destroyed. District clerks may dispose of*

juvenile case papers on their own initiative only according to the retention period set out in (a)(2)(B).

B) If the person has reached the age of 23 and he or she has been convicted of a felony as an adult; or if the person has reached the age of 23, has *not* been convicted of a felony as an adult, but the court on its own or another's motion has not ordered the destruction of the papers. RETENTION: Until the individual is 33.

b) Records concerning delinquent conduct or offenses committed on or after 1 September 1987:

1) Fingerprint cards and photographs *only*:

A) If a petition alleging that the juvenile engaged in delinquent conduct or conduct indicating a need for supervision is not filed, the proceedings are dismissed, or the juvenile is found not to have engaged in the alleged conduct; or the juvenile is found to have engaged in the conduct but has reached the age of 18, is not subject to commitment to the Texas Youth Commission or to transfer under a determinate sentence to the Texas Department of Corrections and there is *no* record that he or she committed a criminal offense after reaching the age of 17; or the person is older than 18 years, at least three years have elapsed after the person's release from commitment, and there is no evidence that he or she committed a criminal offense after the release. RETENTION: Must be destroyed immediately upon fulfillment of any of the conditions listed. [By law - Family Code, Section 51.15(e).] (Exempt from destruction request to the Texas State Library)

B) If the juvenile is found to have engaged in conduct involving a violation of the penal code of a grade other than a felony, has reached the age of 18, but there is a record that he or she committed an offense after reaching the age of 17. RETENTION: *Follow the retention periods in (b)(2)(A) or (B), as applicable.*

C) If the juvenile is found to have engaged in conduct involving a violation of the penal code of the grade of felony. RETENTION: *Follow the retention period in (b)(2)(C).*

2) All other case papers:

A) If the person has reached the age of 23, was adjudged delinquent based on the violation of a penal law other than the grade of felony, and has *not* been convicted of a felony as an adult. RETENTION: *See retention note.* [By law - Family Code, Section 51.16(i).] (Exempt from destruction request to the Texas State Library)

Retention Note: *State law requires that the records can only be destroyed at this point by the court's own motion or upon a motion by the person in whose name the files or records are kept. District clerks wishing to dispose of juvenile case papers at the expiration of the retention period prescribed under these circumstances should petition the court for an order directing that the records be destroyed. District clerks may dispose of juvenile case papers on their own initiative only according to the retention period set out in (2)(B) or (C).*

B) If the person has reached the age of 23, was adjudged delinquent based on the violation of a penal law other than the grade of felony, but he or she has been convicted of a felony as an adult; or if the person has reached the age of 23, has *not* been convicted of a felony as an adult, but the court on its own or another's motion has not ordered the destruction of the papers. RETENTION: Until the individual is 33.

C) If the case papers concern an adjudication of delinquency based on the violation of a penal law of the grade of felony. RETENTION: Date of judgment in disposition hearing + 25 years.

3) Audio or videotapes of release hearings. RETENTION: Date of final judment in release hearing + 2 years. [By law - Family Code, Section 54.11(g).]

2100-02 **JUVENILE DOCKET.** RETENTION: 5 years.

2100-03 **JUVENILE FILE DOCKET (JUVENILE DOCKET-PENDING)** - Original entry docket books or sheets of juvenile detention, transfer, adjudication, and disposition hearings. *(See retention note.)*

> ***Retention Note:*** *Follow retention periods for Civil File Docket [2025-05], except that Type IV dockets need be kept only FE + 5 years rather than permanently.*

2100-04 **JUVENILE MINUTES.** RETENTION: PERMANENT.

PART 5: CRIMINAL CASE RECORDS

2125-01 **BAIL BOND RECORD** - Record of bail or recognizance bonds set or taken. RETENTION: 3 years.

2125-02 **BENCH WARRANTS** - Stub books or copies of bench warrants issued. RETENTION: 2 years.

2125-03 **CAPIASES** - Stub books or copies of capaises and summonses issued. RETENTION: 2 years.

2125-04 **CRIMINAL BAR DOCKET (STATE BAR DOCKET)** - Docket books or sheets of criminal cases filed for the use of attorneys. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2125-05 **CRIMINAL CASE PAPERS** - Documents relating to criminal cases, including those concerning habeas corpus and extradition.

a) Misdemeanor cases, including those reduced to misdemeanor under Penal Code, Section 12.44 (*except* DWI and DUID). RETENTION: Date of dismissal or final judgment + 5 years, as applicable, *but see retention note (g) on page 5.*

b) DWI and DUID cases. *(See retention note.)*

> ***Retention Note:*** *5 years after dismissal or acquittal, 10 years after final judgment in convictions for a first and second offense or in convictions for a third or subsequent offense if the sentence is 2 years or less, or follow retention period under (d) if the sentence in a third or subsequent offense is more than 2 years. See also retention note (g) on page 5.*

c) Felony cases in which charges are dismissed or the defendant is found not guilty. *(See retention note.)*

> ***Retention Note:*** *10 years after dismissal or final judgment, as applicable, except (1) if proceedings are dismissed as the result of the satisfactory completion of a term of probation under deferred adjudication, follow the retention period in (d); or (2) if the defendant is acquitted by reason of insanity follow the retention period in (g).*

d) Felony cases in which the sentence (or suspended sentence), term of probation, combined sentence and term of probation, cumulative sentences or terms of probation, or the longest sentence or term of probation of two or more sentences or terms of probation to be served concurrently is more than 2 but less than 20 years. RETENTION: Final judgment + 25 years.

e) Felony cases in which the sentence, cumulative sentences, or the longest sentence of two or more sentences to be served concurrently is more than 20 years, including cases in which the sentence is life imprisonment or the death penalty. RETENTION: PERMANENT.

f) Misdemeanor or felony cases in which proceedings are discontinued for civil commitment proceedings under Section 6, Article 46.02, Code of Criminal Procedure. *(See retention note.)*

> ***Retention Note:*** *If at any time the defendant is found competent to stand trial and proceedings are continued to final judgment, follow the appropriate retention period for adjudicated cases in (a) through (f); if at any time the defendant is discharged by the court or the charges are dismissed and the defendant bound*

over to a court of appropriate jurisdiction for civil commitment, follow the retention period in (a) or (c), as applicable; or if the defendant is neither found competent to stand trial, discharged by the court, nor are charges against the defendant dismissed preparatory to transfer to an appropriate court for civil commitment, 50 years.

g) Felony cases in which the defendant is acquitted by reason of insanity and in which the district court retains jurisdiction of the case for civil commitment under Section 4(d), Article 46.03, Code of Criminal Procedure. *(See retention note.)*

***Retention Note:** If at any time the court finds that the person does not meet the criteria for involuntary commitment, 10 years from date of release; otherwise, 10 years after the death or discharge of the person from a mental health or mental retardation facility, if known, or if not known, 50 years after date of initial order of commitment.*

h) Habeas corpus proceedings. *(See retention note.)*

***Retention Note:** 5 years from issuance or denial of writ in pre-conviction proceedings unless the court issuing the writ is the same court having jurisdiction of the offense with which the applicant is charged, in which case the records should be kept for the same period as the case papers to which they relate. Post-conviction habeas corpus proceedings records should be retained for the same period as the case papers to which they are ancillary, except if the proceedings arise from an extradition demand, the retention period under (i) should be followed.*

i) Extradition proceedings. RETENTION: Date of decision on extradition demand + 5 years.

j) Exhibits. RETENTION: *See retention note (i) on page 6.* (Exempt from destruction request to the Texas State Library)

* k) Bills of cost in criminal cases. RETENTION: FE of final payment + 5 years.

* l) Transcripts and statements of fact from the district court on appeal. RETENTION: Receipt of mandate + 3 years.

* m) Pre-sentence investigation reports (misdemeanors). RETENTION: Final judgment + 2 years.

* n) Pre-sentence investigation reports (felonies). RETENTION: Final judgment + 10 years.

* o) Warrants, capiases, summonses, subpoenas, witness attachments, returns, and applications for such process. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

* p) Bail, personal, appeal, peace, cost, and other surety bonds, or certificates of deposit or affidavits in lieu thereof. RETENTION: 3 years after final judgment rendered or proceedings otherwise terminated in the case.

2125-06 **CRIMINAL DOCKET (CRIMINAL DOCKET-DISPOSED)**

a) Docket of misdemeanor cases *only*. RETENTION: FE + 5 years, *but see retention note (g) on page 5.*

b) Docket of habeas corpus filing *only*. RETENTION: 5 years.

c) All other criminal dockets of disposed cases. RETENTION: 20 years.

2125-07 **CRIMINAL FILE DOCKET (CRIMINAL DOCKET-PENDING)** - Original entry docket books or sheets of criminal cases.

a) TYPE I - File docket, which *does not contain* an account of fees due, whose contents are *transcribed* into a Criminal Docket [2125-06] after adjudication. RETENTION: AV after transcription.

b) TYPE II - File docket, which *does contain* an account of fees due, whose contents, *except* that relating to fees, are *transcribed* into a Criminal Docket [2125-06] after adjudication. RETENTION: FE + 5 years.

c) TYPE III - Non-transferred sheets of file docket, which *does not contain* an account of fees due, whose sheets are *transferred* to a Criminal Docket [2125-06] as the case moves from pending to disposed. RETENTION: 3 years.

d) TYPE IV - File docket, which *does contain* an account of fees due, whose contents *are not transcribed* or whose sheets *are not transferred,* but which serves as a combination file docket, criminal docket, and fee book. RETENTION: *Follow retention periods for Criminal Docket [2125-06].*

2125-08 **CRIMINAL MINUTES.** RETENTION: PERMANENT.

2125-09 **EVIDENCE DOCKET** - Docket recording evidentiary material filed in criminal cases.

a) If receipt of evidentiary material *is also* noted in the Criminal File Docket [2125-07]. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) If receipt of evidentiary material *is not* noted in Criminal File Docket [2125-07]. RETENTION: *Follow retention periods for Criminal File Docket [2125-07].*

2125-10 **EXPUNGED CRIMINAL RECORDS** - All criminal records and files, expunged pursuant to court order, transmitted by other agencies to the district clerk or already in his possession, including petitions for expunction, copies of court orders, and return receipts.

(a) Expunged records arising from arrests for offenses committed on or before August 31, 1989. RETENTION: Date of issuance of order + 1 year. (Exempt from destruction request to the Texas State Library)

(b) Expunged records arising from arrests for offenses committed on or after September 1, 1989 that are not given to the petitioner. RETENTION: Must be destroyed on first anniversary date of date of issuance of order. [By law - Code of Criminal Procedure, Section 55.02(d).] (Exempt from destruction request to the Texas State Library)

2125-11 **PROBATION MINUTES.** RETENTION: PERMANENT.

2125-12 **SEARCH WARRANTS** - Search warrants with returns, issued by a district judge, including inventories of property and any other associated documents.

a) If the judge is not satisfied that there was good ground for the issuance of the warrant. RETENTION: Date of issuance + 10 years.

b) If the judge is satisfied that there was good ground for the issuance of the warrant. *(See retention note.)*

Retention Note: *The warrant, inventory of property, and any other associated documents are forwarded to the clerk of the court having jurisdiction of the case. If transferred to the district clerk, see Examining Trial Case Papers [2225-01].*

2125-13 **SUBPOENAS (CRIMINAL)** - Stub books, copies, or recorded copies of subpoenas issued. RETENTION: 2 years.

2125-14 **WITNESS ATTACHMENTS** - Stub books, copies, or recorded copies of attachment writs issued. RETENTION: 2 years.

2125-15 **WITNESS RECORD (WITNESS DOCKET)** - Register of witnesses subpoenaed, attached, or recognized in criminal cases. RETENTION: 3 years.

PART 6: MULTI-CASE/MULTI-COURT RECORDS

2150-01 **APPEAL RECORD (TRANSCRIPT DOCKET)** - Record or register of civil or criminal appealed to a higher court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2150-02 **ATTORNEYS' ORDER BOOK (CITATION RECORD)** - Record of attorneys' requests for the issuance of legal papers. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2150-03 **ATTORNEYS' RECEIPT BOOK** - Attorneys' receipts for documents temporarily withdrawn from custody of the court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2150-04 **DEPOSITION RECORD** - Record or register of depositions filed in civil or criminal cases. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2150-05 **DISTRICT COURT DOCKET** - Combined form of the Civil Docket [2025-04] and the Criminal Docket [2125-06]. RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2150-06 **DISTRICT COURT FILE DOCKET (DISTRICT COURT DOCKET-PENDING)** - Original entry docket books or sheets of civil and criminal cases. RETENTION: *Follow retention period for Civil File Docket [2025-05].*

2150-07 **DISTRICT COURT MINUTES (CIVIL AND CRIMINAL MINUTES).** RETENTION: PERMANENT.

2150-08 **EXECUTION DOCKET** - Record of executions issued to enforce judgments rendered in all manner of cases. RETENTION: PERMANENT.

2150-09 **MOTION DOCKET** - Docket books or sheets recording motions filed by attorneys.

a) Combined civil/criminal motion docket. RETENTION: PERMANENT.

b) Separate civil motion docket. RETENTION: PERMANENT.

c) Separate criminal motion docket. RETENTION: 20 years.

2150-10 **PROCESS LOG (DAY BOOK)** - Chronological daily log of process and other instruments issued or received. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2150-11 **SCIRE FACIAS DOCKET (BOND FORFEITURE DOCKET).** RETENTION: PERMANENT. [By rule of court - Rules of Civil Procedure, Rule 26.]

2150-12 **SCIRE FACIAS MINUTES (BOND FORFEITURE MINUTES).** RETENTION: PERMANENT.

PART 7: MISCELLANEOUS COURT RECORDS

2175-01 **ADMINISTRATIVE ORDERS** - Administrative orders issued by a district judge appointing special judges, court reporters, bailiffs, temporary clerks, and other court officers; admitting attorneys to practice before the bar; setting date and time of court sessions; and establishing other matters relating to the administrative functioning of a district court.

a) Original orders that *have been recorded* in a minute book of the court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) Original orders that *have not been recorded* in a minute book of the court. RETENTION: PERMANENT.

2175-02 **ATTORNEY GENERAL, REPORTS TO** - Copies of periodic reports by district clerk to the attorney general on criminal matters. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-03 **COURT REPORTER REPORTS** - Reports submitted by court reporters to district court on the amount and nature of the business pending in the court reporter's office. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

2175-04 **COURT REPORTER EXAMINATION RECORDS** - Records of competency examinations given to prospective court reporters. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2175-05 **DRUG-RELATED CONVICTIONS, RECORD OF** - Copies of lists of persons convicted of a drug-related felony in the county. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-06 **FIRE INQUEST CASE PAPERS** - Reports and verdicts of fire inquest juries, testimony of witnesses, and all other documentary evidence relating to fire inquests held by a justice of the peace. RETENTION: Date of filing with district clerk + 10 years.

> ***Retention Note:*** *Fire inquest case papers entered as evidence in a criminal or other proceeding should be retained for the same period as the corresponding case papers. See Criminal Case Papers [2125-05] and Civil Case Papers [2025-03].*

2175-07 **GRIEVANCE COMMITTEE JUDGMENTS** - Copies of judgments issued by State Bar grievance committees concerning the disbarment, suspension, or reprimand of attorneys.

a) Original judgments that *have been recorded* in a minute book of the court. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

b) Original judgments that *have not been recorded* in a minute book of the court. RETENTION: PERMANENT.

2175-08 **INDUSTRIAL ACCIDENT BOARD, NOTICES TO** - Copies of notices sent to the Industrial Accident Board notifying the board of the filing of appeals from decisions of the board. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-09 **INQUIRY COURT CASE PAPERS** - Transcriptions of evidence and other papers arising from a court of inquiry held by a district judge.

> ***Retention Note:*** *Any inquiry court case papers transferred to Criminal Case Papers [2125-05] as the result of an arrest and prosecution arising from the court of inquiry should be retained for the same period as the appropriate category of Criminal Case Papers. RETENTION: 10 years.*

2175-10 **INQUEST CASE PAPERS** - Autopsy reports, testimony of witnesses, laboratory reports, reports of death, and other documentary evidence or summaries of findings relating to inquests held by a justice of the peace. RETENTION: Date of filing with district clerk + 10 years, *but see retention note.* [By law - Code of Criminal Procedure, art. 49.15(d).]

> ***Retention Note:*** *An order of the district court must be obtained by the district clerk to destroy this record after the expiration of its retention period. Original inquest case papers or summary reports entered as evidence in a criminal or other proceeding should be retained for the same period as the corresponding case papers. See Criminal Case Papers [2125-05] and Civil Case Papers [2025-03].*

2175-11 **JUDICIAL ADMINISTRATION REPORTS** - Reports by district clerk to the county administrative judge or the presiding judge of an administrative judicial region. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-12 **MOTOR CARRIER CONVICTIONS, REPORTS OF RECORD OF** - Copies of reports to the State Comptroller of fines assessed and collected for violations of the Motor Carrier Act. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-13 **SHORTHAND NOTES OF OFFICIAL COURT REPORTERS** - Shorthand notes of official court reporters.

a) Notes taken in a criminal case in which a person is convicted and sentenced to a term of more than two years and an appeal is not taken. RETENTION: Length of sentence or 15 years, whichever sooner. [By rule of court - Rules of Appellate Procedure, Rule 11(d).]

b) Notes in all other manner of cases. RETENTION: Date notes taken + 3 years. [By law - Government Code, Section 52.046(a)(4).

c) Copies of transcripts and statements of fact.

Retention Note: While the responsibility for preserving notes under (b) lies with the court reporter, reporters may have left office and left their notes with the district clerk or in storage in county buildings. These notes may be disposed of after the expiration of the retention period given. State law also does not require that court reporters retain copies of any transcripts or statements of fact they prepare, but most do so for reference. Again, copies of these documents may have been left with the district clerk or in storage in county buildings. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-14 **TEXAS JUDICIAL COUNCIL, STATISTICAL REPORTS TO.** RETENTION: 3 years.

2175-15 **TRAFFIC CONVICTION ABSTRACTS** - Copies of abstracts submitted to the Department of Public Safety pertaining to traffic violations. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2175-16 **WIRE AND ORAL COMMUNICATIONS INTERCEPTION RECORDS** - Sealed sound recordings, applications, and court orders of wire and oral communications interceptions ordered by a district judge.

* a) Recordings. RETENTION: Expiration of order or last extension of order, if applicable + 10 years. [By law - Code of Criminal Procedure, art. 18.20(10)(b).] (Exempt from destruction request to the Texas State Library)

b) Applications and orders. RETENTION: Date of sealing + 10 years. [By law - Code of Criminal Procedure, art. 18.20(11).] (Exempt from destruction request to the Texas State Library)

Retention Note: The destruction of recordings, applications, and orders at the expiration of the retention period for each can be carried out only by order of the judge of competent jurisdiction in each administrative district.

PART 8: JURY RECORDS

* 2200-01 **JURY LISTS** - Lists of persons chosen for service in district, county, or justice courts or on grand juries, including lists of persons whose service has been postponed and defendants' and plaintiffs' lists. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

* 2200-02 **JURY TIME BOOK (JURY RECORD)** - Record of persons serving on district court juries or grand juries. RETENTION: FE + 3 years.

2200-03 **SPECIAL VENIRE JURY LISTS** - Lists of jurors summoned by writs of special venire for capital cases tried in a district court. RETENTION: 5 years.

2200-04 **STATEMENTS OF EXEMPTION FROM JURY DUTY** - Statements by persons claiming temporary or permanent exemption from jury duty on statutory grounds, including any statements of rescission of such claims.

a) Statements requesting permanent exemption. RETENTION: AV after notification sent to tax assessor-collector. (Exempt from destruction request to the Texas State Library)

b) Statements requesting temporary exemption. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

* 2200-05 **JUROR QUESTIONNAIRES** - Forms completed by jurors reporting for jury duty. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

PART 9: GRAND JURY RECORDS

2225-01 **EXAMINING TRIAL CASE PAPERS (CRIMINAL COMPLAINT FILES).** RETENTION: 5 years.

2225-02 **EXAMINING TRIAL RECORD OR REGISTER** - Record or register of complaints or examining trial cases referred to the grand jury. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2225-03 **GRAND JURY DOCKET (GRAND JURY MINUTES).** RETENTION: 10 years.

2225-04 **GRAND JURY FEE ACCOUNT REPORTS** - Annual reports to the district judge by the grand jury on the examination of officers' fee accounts. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

2225-05 **GRAND JURY INDICTMENT REPORTS** - Reports to the district court by a grand jury showing indictments handed down by the grand jury during its term. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2225-07 **INDICTMENT RECORD OR REGISTER** - Register or card file logging indictments returned by grand jury. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2225-08 **JUSTICE COURT DOCKET TRANSCRIPTS** - Certified copies of justice court criminal and examining trial dockets filed by justices of the peace. RETENTION: Date of filing + 1 year. (Exempt from destruction request to the Texas State Library)

2225-09 **SUBPOENAS (GRAND JURY)** - Stub books, copies, or recorded copies of subpoenas issued. RETENTION: 2 years.

2225-10 **WITNESS RECORD (GRAND JURY)** - Register of witnesses subpoenaed, attached, or recognized before a grand jury. RETENTION: 2 years.

PART 10: NATURALIZATION RECORDS

2250-01 **DECLARATION OF INTENTION RECORD** - Bound or filed originals or recorded copies of declarations of intention to become citizens filed by aliens. RETENTION: PERMANENT.

2250-02 **NATURALIZATION PAPERS** - Petitions for naturalization, oaths of allegiance, witness affidavits, and orders granting or denying citizenship submitted by aliens or their witnesses. RETENTION: PERMANENT.

2250-03 **NATURALIZATION RECORD** - Proceedings involving naturalization. RETENTION: PERMANENT.

PART 11: ADMINISTRATIVE AND FINANCIAL RECORDS

2275-01 **ACKNOWLEDGMENT RECORD** - Record of acknowledgments or proofs of instruments taken by the district clerk as ex-officio notary public. RETENTION: 10 years.

2275-02 **ANNUAL FEE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-03 **APPLICATIONS FOR DEPUTIES** - Copies of applications to commissioners court for deputies, assistants, or clerks. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-04 **AUDITOR'S REPORTS** - Reports of county finances submitted by the county auditor to the district court.

a) Monthly report. RETENTION: 1 year. (Exempt from destruction request to the Texas State Library)

b) Annual reports. RETENTION: 3 years.

* 2275-05 **BANKING RECORDS** - Bank statements, canceled or digitized images of checks, check registers, deposit slips, debit and credit notices, reconciliations, notices of interest earned, etc. RETENTION: FE + 5 years.

2275-06 **CASH RECEIPTS** - Receipt books or copies of receipts upon payment of fees, fines, or costs in civil, criminal, probate or other cases; or for the deposit of trust funds.

a) Criminal receipts:

1) If county has an auditor. RETENTION: Transferred to auditor when all receipts issued. [By law - Code of Criminal Procedure, Section 103.011.]

2) If the county does not have an auditor. RETENTION: FE + 5 years.

b) All other district court receipts. RETENTION: FE + 3 years.

2275-07 **CHILD SUPPORT PAYMENT LEDGER** - Ledger showing the receipt and disbursement of monies from the child support payment fund. RETENTION: FE + 5 years.

2275-08 **CHILD SUPPORT PAYMENT RECORD** - Record of child support payments by case. RETENTION: End of support period + 10 years.

2275-09 **COST DEPOSIT RECORD** - Records of receipts to and disbursements from monies deposited with the district clerk to cover costs in civil proceedings. RETENTION: FE + 5 years.

2275-10 **COUNTY AUDITOR, REPORTS TO** - Reports not listed elsewhere in this schedule submitted to the county auditor on the receipt or disbursement of county funds or on cash balances in accounts of the district clerk. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-11 **COURT REPORTER EXPENSE STATEMENTS** - Copies of statements of expenses incurred by court reporters serving outside the county of their residence in a district court serving more than one county or for serving as a substitute reporter in a county other than that in which they are resident. RETENTION: FE + 3 years.

2275-12 **DAILY CASH BOOK OR REPORTS.** RETENTION: FE + 3 years.

2275-13 **DAILY FILE RECORD** - Daily record or register of papers received for filing. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-14 **DEPOSIT WARRANTS** - Copies of deposit warrants issued by the county clerk or the county treasurer for monies deposited in any funds or accounts of the district clerk. RETENTION: FE + 3 years.

2275-15 **FEE BOOK** - Fee books or sheets showing accounts of fees or costs accrued in cases heard in a district court. RETENTION: FE + 5 years.

2275-16 *[Withdrawn, see 2275-15]*

2275-17 **INDEPENDENT AUDIT REPORTS** - Special audit reports of county finances submitted by finance committees or special auditors appointed by a district court. RETENTION: PERMANENT.

2275-18 **JURY CERTIFICATES** - Stubs or copies of jury certificates issued. RETENTION: FE + 3 years.

2275-19 **LEGAL OPINIONS** - Copies of legal opinions rendered to the district clerk by the county attorney or the district attorney. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-20 **MINUTES OF OFFICERS' ACCOUNTS (OFFICERS' FEE BILLS DUE FROM STATE)** - Record of proceedings in district court approving expense claims or fees due from the state to various county or district officers for service in district court felony cases, before the grand jury, or in examining trials. RETENTION: FE + 3 years.

2275-21 **MINUTES OF WITNESS ACCOUNTS (WITNESS FEE CLAIMS)** - Record of proceedings in district court approving witness fee claims. RETENTION: FE + 3 years.

2275-22 **MONTHLY EXPENSE REPORTS.** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-23 *[Withdrawn]*

* 2275-24 **OPEN RECORDS REQUESTS** - Written open records requests, including those sent by electronic mail or facsimile, submitted to a district clerk, including correspondence and other documentation relating to the requests.

a) Approved requests. RETENTION: Approval of request + 1 year. [Exempt from destruction request to the Texas State Library]

b) Denied requests. RETENTION: Denial of request + 2 years.

2275-25 **PROBATION COLLECTION RECORD (PROBATION FILE RECORD)** - Documentation detailing the collection of probation fees. RETENTION: FE + 5 years.

2275-26 **RECORDS MANAGEMENT RECORDS**

a) Records control schedules (including all successive versions of or amendments to schedules). RETENTION: PERMANENT.

b) Records destruction documentation - Records documenting the destruction of records under records control schedules, including requests submitted to the Texas State Library and Archives Commission for authorization to destroy unscheduled records or the originals of permanent records that have been microfilmed. RETENTION: PERMANENT.

c) Records inventories - Lists or inventories of the active and inactive records created or received by a county office. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

d) Records management plans and policy documents - Plans and similar documents establishing the policies and procedures under which a records management program operates. RETENTION: US + 5 years.

2275-27 **REPORTS OF COLLECTIONS (MONTHLY FEE REPORTS).** RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2275-28 **TRUST FUND RECORD** - Journal, ledger, or similar record of receipts to and disbursements from trust funds. RETENTION: FE + 5 years.

2275-29 **WITNESS FEE REPORTS** - Copies of reports submitted by the district clerk to the State Comptroller listing fee claims for out-county witnesses. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

PART 12: BUSINESS AND PROFESSIONAL RECORDS

2300-01 **ATTORNEY LICENSING RECORDS** - Applications for license to practice law and reports of committees on applications for license to practice law. RETENTION: PERMANENT.

2300-02 **ATTORNEY RECORD** - Register or roster of attorneys licensed by a district court to practice in the county. RETENTION: PERMANENT.

2300-03 **CHIROPODY REGISTER (PODIATRY REGISTER)** - Recorded licenses of chiropodists or podiatrists issued by the state. RETENTION: PERMANENT.

2300-04 **CHIROPRACTIC REGISTER** - Recorded licenses of chiropractors issued by the state. RETENTION: PERMANENT.

2300-05 **MEDICAL REGISTER** - Register of physicians licensed by local boards or the state. RETENTION: PERMANENT.

2300-06 **PHARMACY REGISTER** - Register of pharmacists licensed by local boards. RETENTION: PERMANENT.

2300-07 *[Withdrawn]*

2300-08 **VETERINARY REGISTER** - Recorded licenses of veterinarians issued by the state. RETENTION: PERMANENT.

PART 13: MISCELLANEOUS RECORDS

2325-01 **BONDS AND DEPUTATIONS OF COUNTY CLERK** - Bonds, qualifying oaths, and deputations of county clerks and their deputies. RETENTION: AR + 5 years.

2325-03 *[Withdrawn]*

2325-03 **ESTRAY RECORD** - Recorded affidavits and bonds of takers-up of estrayed animals, affidavits of appraisal of the animals, and any accompanying reports of the death of estrays or affidavits of ownership of estrays, recorded with the district clerk under the Stock Law of 1874. RETENTION: PERMANENT.

2325-04 **LIQUOR PRESCRIPTIONS AND AFFIDAVITS** - Prescriptions, canceled prescriptions, and affidavits by druggists for the sale of liquor for medicinal purposes, for the purchase of liquor from out of state or from wholesalers for importation into prohibition territory and affidavits from clergy for the use of liquor for sacramental purposes. RETENTION: PERMANENT.

2325-05 **MARKS AND BRANDS RECORD** - Register of livestock marks and brands and their subsequent sale or transfer, recorded with the district clerk under the Stock Law of 1874. RETENTION: PERMANENT.

2325-06 **PASSPORT APPLICATION RECORDS** - Copies of passport applications and all other records related to the acceptance of such applications. RETENTION: Destroy at option.

2325-07 **PRESCRIPTION REGISTER** - Register of prescriptions and affidavits received from druggists and clergy for the use of liquor for medicinal or sacramental purposes. RETENTION: PERMANENT.

2325-08 **REGISTERED VOTERS, LISTS OF** - Lists or registers of voters qualified to vote. RETENTION: AV. (Exempt from destruction request to the Texas State Library)

2325-09 **REPORTS OF LIQUOR SEIZED** - Reports of liquor and associated property seized, and copies of receipts issued by the sheriff for goods if liquor or property was seized by officers other than the sheriff.

a) Receipts. RETENTION: Destroy at option. (Exempt from destruction request to the Texas State Library)

b) Reports. RETENTION: PERMANENT.

Comments or complaints regarding the programs and services of the Texas State Library and Archives Commission can be addressed to the Director and Librarian, PO Box 12927, Austin, TX 78711-2927. 512-463-5460 or 512-463-5436 Fax

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OFFICE OF COURT ADMINISTRATION

JERRY L. BENEDICT
Administrative Director

TO: Chief Justice, Supreme Court of Texas
Presiding Judge, Court of Criminal Appeals
Chief Justices, Courts of Appeals

FROM: Jeffrey M. Vice

CC: Clerk, Supreme Court of Texas
Clerk, Court of Criminal Appeals
Clerks, Courts of Appeals

DATE: April 7, 1998

SUBJECT: Funding for Records Storage in the Intermediate Appellate Courts

Jerry Benedict has asked that funding for records storage in the intermediate appellate courts be included as an agenda item for your meeting on April 16, 1998. As you may be aware, our office has been researching records management in the intermediate appellate courts, and as a result, we have drafted and are enclosing for your review the following:

- Project overview on records storage in the intermediate appellate courts,
- Cost estimates for microfilming appellate records (Attachments 1 and 1.1),
- States' retention periods for appellate records (Attachment 2),
- Estimated annual appellate records storage costs (Attachment 3), and
- Compiled results of January 1998 survey of the appellate clerks.

In the project overview's Actions for Consideration, we have identified possible approaches to address the records storage problem. These include:

- Changing the storage medium for some or all of the records from paper to microfilm (estimates provided),
- Reducing, through statute, the retention period for criminal records from permanent to some lesser period (criminal records retention periods for other states provided for comparison), and
- Ensuring budgets for the 2000-2001biennium are sufficient to handle current costs, plus projected increases in storage costs or costs associated with developing and implementing records purging projects (current costs estimates provided; projected storage or purging project costs not identified at this time).

Should you have any questions or comments, please do not hesitate to contact me at (512) 936-0197.

Project Overview: Records Storage in the Intermediate Appellate Courts

The Problem:

Storage, assessment, and disposal of an ever increasing number of intermediate appellate court records and the costs associated with those activities.

Background:

Texas Government Code §51.204 requires appellate civil case files to be destroyed ten years after final disposition, except for: (1) records containing "highly concentrated, unique, and valuable information unlikely to be found in any other source available to researchers;" (2) indexes, original opinions, minutes, and general court dockets; and, (3) records determined to be of historical value. However, the clerks have not universally exercised their authority to assess civil case files for historical or other value and purge the dated files deemed of no value.

In addition, appellate criminal case files are to be kept permanently. By the end of the next biennium, the courts will be storing two decades worth of criminal records. Due to the volume of civil and criminal records, most of the appellate courts are encountering difficulty in locating space to house those records, and the current space being used does not always meet records retention standards.

Storage situations vary for each appellate court, but some similarities exist. Many of the courts have received considerable, cost-free space and services from the county where they are located. However, several counties are encouraging the clerks to utilize their retention schedules to destroy some of the court records, particularly as the county facilities become space constrained. Also, several courts have transferred many of their older files to the state Archives in Austin or at regional depositories during a time when the Archives were able and willing to take ownership of the court records. Now, the State Library and Archives Commission is unable to serve as a general repository for appellate court records, except in unique situations.

Actions for Consideration:

1. **Change the storage medium from paper to microfilm.** If criminal records must be kept permanently, converting paper documents to microfilm rolls would alleviate space constraints. Attachment 1 provides microfilming cost estimates based on the clerks' responses to two surveys conducted by the OCA.

2. **Change the statute to reduce the retention period of criminal records.** Reducing the retention period of criminal records would create an essentially finite amount of records to be stored. Twelve of the appellate clerks advocate such a statutory change. Attachment 2 presents an overview of other states' retention periods for criminal records for comparative purposes.

3. **Budget for increasing records storage costs.** Certain courts are facing the possibility of having to seek new or additional storage space from private vendors, particularly if microfilming or a statutory change in the retention period for criminal records does not occur. Cost estimates have not been developed, but monthly fees at the State Records Center run $.1874 per cubic foot (i.e., per box). Attachment 3 presents current estimated annual appellate records storage costs.

4. **Budget for records assessment and purge projects.** To eliminate backlogs, the OCA could assist interested courts in developing projects to assess their backlogged cases for historical or other value as dictated above. As a benchmark, the 5th Court conducted such a project, taking approximately one year to complete, at a cost around $10,000.

5. **Develop or modify, and then implement, records management procedures.** The OCA is working with the appellate clerks and State Library consultants to identify and present "best practices" associated with records management.

Attachment 1: Cost Estimates for Microfilming Intermediate Appellate Court Records

Court	Filming Records Backlog (Based on Jan 98 Clerks' Estimates)			Filming Annual Accumulation of Records (Based on Jan 98 Clerks' Estimates)			Filming Annual Accumulation of Records (Based on FY97/96 Annual Rpts: Total Cases Disposed)		
	Criminal	Civil	TOTAL	Criminal	Civil	TOTAL	Criminal	Civil	TOTAL
1ST COA	$364,875	$241,078	$605,953	$27,366	$11,728	$39,094	$23,114	$18,570	$41,684
2ND COA	$25,198	$542,216	$567,413	$22,805	$9,773	$32,578	$20,931	$11,191	$32,122
3RD COA	$148,068	$134,841	$282,908	$13,683	$15,638	$29,320	$11,533	$13,357	$24,890
4TH COA	$224,659	$220,228	$444,887	$18,244	$18,244	$36,488	$16,729	$17,413	$34,142
5TH COA	$221,531	$71,672	$293,203	$61,898	$19,547	$81,445	$43,231	$18,716	$61,947
6TH COA	$41,961	$49,160	$91,121	$3,909	$5,213	$9,122	$4,626	$3,698	$8,324
7TH COA	$92,652	$83,270	$175,922	$4,691	$4,040	$8,731	$9,285	$5,750	$15,035
8TH COA	$111,189	$314,705	$425,894	$10,555	$8,959	$19,514	$7,916	$6,825	$14,742
9TH COA	$38,703	$58,119	$96,822	$9,773	$16,289	$26,063	$7,167	$7,330	$14,497
10TH COA	$45,192	$33,060	$78,253	$2,606	$1,955	$4,561	$6,271	$5,066	$11,337
11TH COA	$94,346	$44,404	$138,750	$8,340	$2,867	$11,207	$9,920	$3,356	$13,276
12TH COA	$43,003	$51,473	$94,477	$5,213	$5,213	$10,425	$5,278	$5,946	$11,223
13TH COA	$130,313	$65,156	$195,469	$9,773	$9,773	$19,547	$11,044	$10,946	$21,990
14TH COA	$173,967	$232,087	$406,054	$19,547	$17,918	$37,465	$25,444	$18,146	$43,590
TOTALS	$1,755,656	$2,141,469	$3,897,126	$218,404	$147,155	$365,559	$202,489	$146,308	$348,798

Sources: Survey of Texas' Clerks of Courts of Appeals, Office of Court Administration, 1998
Texas Judicial System Annual Reports, Office of Court Administration, FY 1997 & FY 1996
Microfilming Cost Estimate Formulas, Texas State Library and Archives Commission, 1998

Attachment 1.1: Assumptions Used in Developing Cost Estimates for Microfilming Intermediate Appellate Court Records

1. Cost estimates for filming intermediate appellate records backlogs are based on inventory estimates provided by the appellate clerks in their January 1998 survey responses. Two cost estimates for filming annual records accumulations are presented: one is based on inventory estimates provided by the appellate clerks in their January 1998 survey responses, and the other is based on the average of FY97 and FY96 total cases disposed for each court.

2. If a clerk solely provided estimated number of case files (e.g., files kept in shucks), the totals were converted to number of boxes by using a four cases per box ratio.

3. The 2nd COA provided a case file count not segregated into civil or criminal. First, the case file count was converted using Assumption 2.; then, since cases counted were from 1921-86, 95% were assigned to civil and 5% to criminal.

4. The cost estimates do not reflect several courts' records reduction activities since the beginning of the year (e.g., the 2nd COA has shipped several hundred boxes of pre-1920 cases to the Archives and destroyed hundreds more).

5. The 7th COA's cost estimates reflect approximately 3000 case files, from 1991 to 1998, which were not identified in their January 1998 survey response, but are housed on-site.

6. The 13th COA's cost estimates do not reflect that approximately 2,000 of the 6,000 case files have previously been microfilmed, per the clerk; consequently, the estimate should be reduced by one-third.

7. Calculation formulas were based on State Library and Archives Commission figures:
   - Total # Documents/Images: 2500 images per box
   - Total # Original/Duplicate Rolls: 4000 images per roll
   - Total # Document Preparation Hours: 1000 images per hour
   - Total # Months to Complete Project: 1 roll prepared and filmed per day by one person (project length proportionate to number of preparers and photographers)
   - Total Filming Cost: $.04 per image
   - Total Duplication Cost: $8.50 per roll
   - Total Document Preparation Cost: $10 per preparation hour

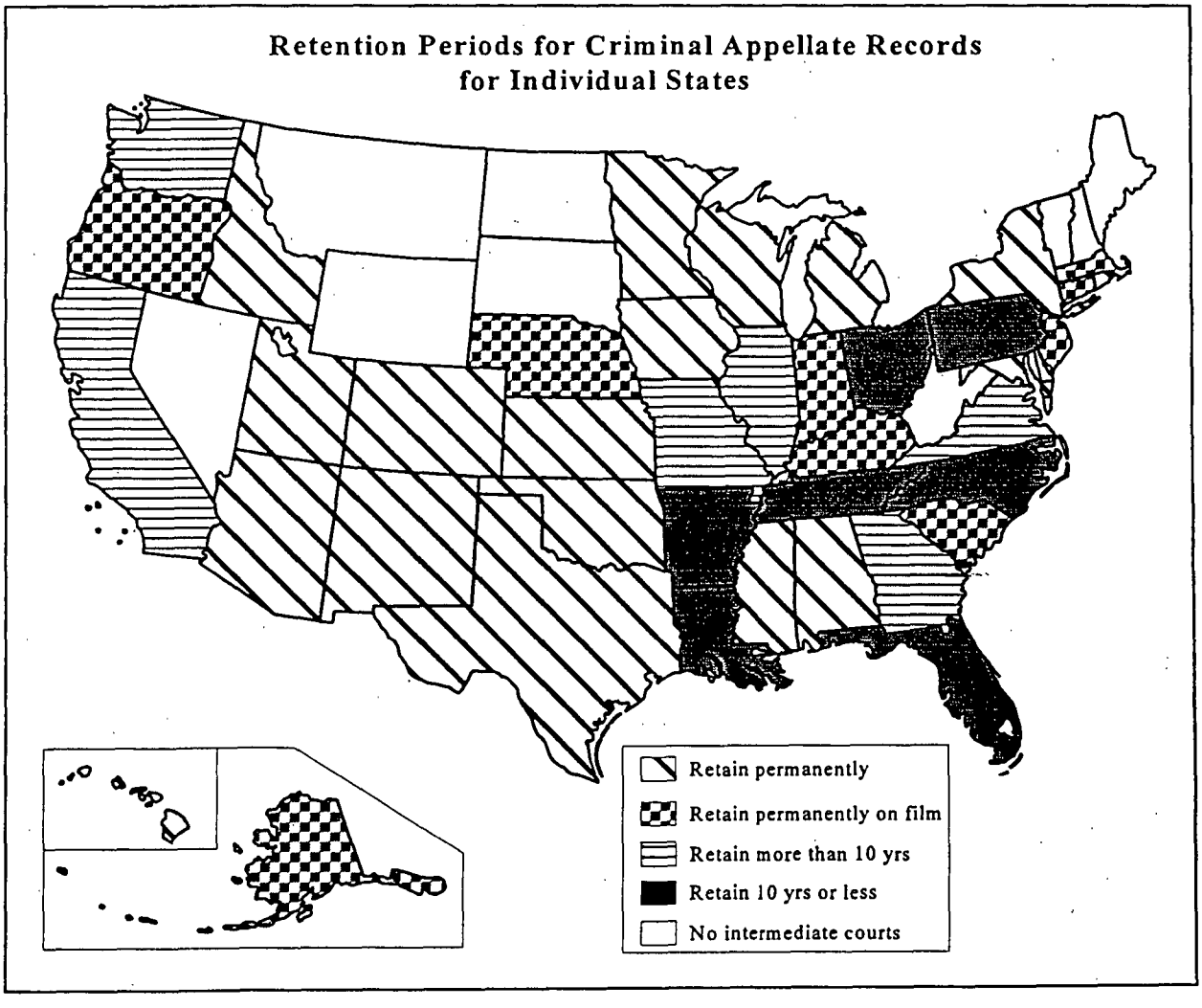
8. Document preparation includes removal of all fasteners, mending of torn pages, visual inspection, sorting of documents and creation of targets.

9. Cost estimates do not include the cost of microfilm readers/printers, which can average $6,000 per Ken Hensley, Manager of Micrographics Services at the Texas State Library.

10. Cost estimates do not include any shipping or transportation costs.

Attachment 2: States' Retention Periods for Intermediate Appellate Court Records

Retention Period for States with Intermediate Appellate Courts	Number of States by Case Type	
	Criminal Cases	Civil Cases
Permanently	17	16
Permanently on microfilm	9	9
Retain more than 10 years	6	3
Retain 10 years or less	7	11
Subtotal	39	39
States without intermediate appellate courts	11	11
Total	50	50



Source: National Survey Regarding Retention of Appellate Records, Office of Court Administration, 1998.

Attachment 3: Estimated (May '97) Annual Intermediate Appellate Records Storage Costs

Court	Cost[1]	Comments
1st COA	None	Harris County provides free storage, but is encouraging retention schedule implementation. The court has responded, initiating a records purging project.
2nd COA	$10,000	This amount has already been greatly diminished by the court's current records purging project. Pre-1920 case files have been transferred to the state Archives, and many civil records deemed valueless by the court are being destroyed.
3rd COA	$4,200	This amount reflects cost-recovery fees from the State Records Center enacted September 1997. Starting in 2002, storage will be needed for the return each year of one year's worth of criminal records.
4th COA	$9,852	$3,444 is actual current court cost, with remainder subsidized by the county, but subsidy under dispute. Pre-1981 civil records transferred to Archives, but still require historical value assessment/file purging.
5th COA	None	Dallas County provides free storage. During this and last fiscal year, the court spent approximately $10,000 to review, retain, re-file, and purge court records. Pre-1920 case files have been transferred to the state Archives.
6th COA	$1,200	This amount reflects charges from a private storage vendor.
7th COA	None	County provides free storage. Pre-1920 case files have been transferred to the state Archives.
8th COA	None	El Paso County provides free storage, but has inquired about retention schedules.
9th COA	$1,000	This amount for purchasing boxes. Special relationship with Archives regional depository enables court to transfer files to Liberty location.
10th COA	$1,380	This amount reflects charges from a private storage vendor.
11th COA	None	On-site storage only.
12th COA	None	On-site storage only.
13th COA	None	On-site storage only.
14th COA	None	Harris County provides court free storage, but is encouraging retention schedule implementation.
Total	$27,632	

1. Costs based on clerks' May 1997 responses to OCA survey on records retention (figures were not verified; nor were peripheral costs identified (except by 9th COA), such as staff time, jackets, boxes, or shelves)). Costs indicated are per year.

SUBCHAPTER C. CLERKS OF COURTS OF APPEALS

§ 51.204. Records of Court

(a) The clerk of a court of appeals shall:

(1) file and carefully preserve records certified to the court and papers relative to the record;

(2) docket causes in the order in which they are filed;

(3) record the proceedings of the court except opinions and orders on motions; and

(4) certify the judgments of the court to the proper courts.

(b) Upon the issuance of the mandate in each case, the clerk shall notify the attorneys of record in the case that:

(1) exhibits submitted to the court by a party may be withdrawn by that party or the party's attorney of record; and

(2) exhibits on file with the court will be destroyed 10 years after final disposition of the case or at an earlier date if ordered by the court.

(c) Not sooner than the 60th day and not later than the 90th day after the date of final disposition of a case, the clerk shall remove and destroy all duplicate papers in the file on record of that case.

(d) Ten years after the final disposition of a civil case in the court, the clerk shall destroy all records filed in the court related to the case except:

(1) records that, in the opinion of the clerk or other person designated by the court, contain highly concentrated, unique, and valuable information unlikely to be found in any other source available to researchers;

(2) indexes, original opinions, minutes, and general court dockets unless the documents are microfilmed in accordance with this section for permanent retention, in which case the original document shall be destroyed; and

(3) other records of the court determined to be archival state records under Section 441.186.

(e) The clerk shall retain other records of the court, such as financial records, administrative correspondence, and other materials not related to particular cases in accordance with Section 441.185.

(f) Before microfilming records, the clerk must submit a plan in writing to the justices of a court of appeals for that purpose. If a majority of the justices of a court of appeals determines that the plan meets the requirements of Section 441.188, rules adopted under that section, and any additional standards and procedures the justices may require, the justices shall inform the clerk in writing and the clerk may adopt the plan. The decision of the justices must be entered in the minutes of the court.

Amended by Acts 1997, 75th Leg., ch. 873, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Acts 1997, 75th Leg., ch. 873, in the section heading, substituted "Records of Court" for "Duties"; in subsec. (d), in subd. (2), substituted "in accordance with this section" for "or otherwise reduced", and added subd. (3); deleted subsec. (e); redesignated former subsec. (f) as subsec. (e), and therein substituted "in accordance with Section 441.185" for "for the time period specified by order of the court"; and added subsec. (f). Prior to amendment, subsec. (e) read:

"A record described in Subsection (d)(1) may be transferred to a public or private library or other agency concerned with the preservation of historical documents to be preserved or disposed of as the library or agency may determine."

§ 51.205. Repealed by Acts 1997, 75th Leg., ch. 873, § 8(1), eff. Sept. 1, 1997

Historical and Statutory Notes

The repealed section, relating to preservation of records, was derived from:

Acts 1977, 65th Leg., p. 342, ch. 169.
Acts 1981, 67th Leg., p. 793, ch. 291, § 46.

Acts 1985, 69th Leg., ch. 480, § 1.

§ 51.207. Fees and Costs

[See mai

(b) The fees are:

(b) The fees are:
(1) for cases appealed to and file
district and county courts v
(2) motion for leave to file petitio
injunction, and other similar
of appeals .....
(3) additional fee if the motion un
(4) motion to file or to extend t
district or county court .....

Amended by Acts 1997, 75th Leg., ch. 1080, § 1,

Histo-ical a

1997 Legislation

Acts 1997, 75th Leg., ch. 1080, in subd. (
substituted "$100" for "$50"; in subd. (2), subs
tuted "$50" for "$20"; in subd. (3), substitut
"$75" for "$30"; and in subd. (4), substituted "$1
for "$5".

Section 2 of Acts 1997, 75th Leg., ch. 10
provides:

Notes

Criminal proceedings 2

---

2. Criminal proceedings

Although proceeding for forfeiture of appea
ance bond is criminal proceeding, costs on appe

SUBCHAPTER D

§ 51.302. Bond; Oath; Insurance

[See main vol

(c) Each district clerk shall obtain an
governmental pool operating under Chap
district clerk and any deputy clerk against
the performance of official duties. The am
the maximum amount of fees collected in
preceding the term for which the ins
or other coverage document may no
policy or other coverage document provides
the policy must be at least $1 million.

[See main vol

Amended by Acts 1993, 73rd Leg., ch. 561, § 2, ef

SPECIAL SUPPLEMENT TO

TEXAS RULES OF COURT

STATE

1997

CONTAINING
AMENDMENTS TO
TEXAS RULES OF APPELLATE PROCEDURE

WEST GROUP

SUPREME COURT ORDER REGARDING DISPOSITION OF COURT PAPERS IN CIVIL CASES

IN THE SUPREME COURT OF TEXAS

ORDER REGARDING DISPOSITION OF COURT PAPERS IN CIVIL CASES

ORDERED that:

A. **Definitions.**

1. *Court records* or *records* means:

(a) the clerk's record;

(b) the reporter's record; and

(c) any other documents or items filed, or presented for filing and received in an appellate court in a particular case.

2. *Appellate record* means the clerk's record and the reporter's record and any supplements.

B. **In the Courts of Appeals.** The following paragraphs govern disposing of court records by the courts of appeals:

1. *Determination of permanent preservation.* Before any court records are destroyed, the court of appeals must—under Section 51.205 of the Government Code and State Archives guidelines—determine whether the records should be permanently preserved.

2. *Initial determination.* Immediately after final disposition of an appeal or other proceeding, the panel that decided the case must determine whether the case's records should be permanently preserved and must file with the records a statement declaring that the records should or should not be permanently preserved.

3. *Later determination.* After its initial determination, but before any court records are destroyed, the court of appeals may reexamine its initial determination under 2 and may change its designation.

4. *Original papers and exhibits in appeals.* Whatever the court determines concerning permanent preservation of a case's records, any original documents or exhibits must, within 30 days after final disposition of an appeal or other proceeding, be returned to the trial court in accordance with any trial court order entered under Rules 34.5(f) and 34.6(g). The court of appeals may, but need not, copy those documents and exhibits before returning them to the trial court. The court of appeals may dispose of copies of nondocumentary exhibits after the case is final on appeal.

5. *All other papers and exhibits.* Subject to paragraph 4., the court of appeals must keep and preserve all records of a case (except duplicates) until they are ultimately disposed of under this rule.

6. *Ultimate disposition.* After the period prescribed by Section 51.204 of the Government Code or other applicable statute has expired, the court of appeals must:

(a) destroy those records the court has determined need not be permanently preserved; and

(b) turn over to the State Archives or other repository allowed by law those records the court has determined should be permanently preserved.

C. **In the Supreme Court.** The following paragraphs govern disposing of court records by the Supreme Court:

1. *If case reversed and remanded to court of appeals.* If the Supreme Court grants review and remands the case to the court of appeals, the Supreme Court will return the appellate record to the court of appeals. The court of appeals will then dispose of the court records in accordance with subdivision B. The Supreme Court will keep and preserve all remaining items (except duplicates) until they are turned over to the State Archives as provided by law.

2. *If case affirmed or reversed and remanded to trial court.* If the Supreme Court grants review and either affirms the court of appeals or reverses and remands to the trial court, the Supreme Court will not return the appellate record but will keep and preserve all records of the case (except duplicates) until those records are turned over to the State Archives as provided by law.

3. *In all other cases.* In all other cases, the Supreme Court will return the appellate record to the court of appeals and keep and preserve all remaining records of the case (except duplicates) until they are turned over to the State Archives as provided by law.

(Effective September 1, 1997.)

Records Storage in the Intermediate Appellate Courts

Appellate Court Clerks' Meeting

May 14, 1998

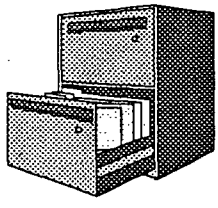
The Problem

Although court costs for records storage are currently nominal, the likelihood exists that costs will increase as

- the number of records increases
- costs are shifted to the courts

Current Situation

- Differences between the COAs
  - records backlogs
  - storage venues
    - county
    - state
    - private vendors
  - storage costs
- Similarities between the COAs
  - files accessed infrequently, except for OAG



Texas Government Code §51.204

- Retain **civil** case records for **10 years**, except
  - records with "...highly concentrated, unique, and valuable information unlikely to be found in any other source available to researchers"
  - indexes, original opinions, minutes, and general court dockets
  - records determined to be archival state records (i.e., historical value)

Texas Government Code §51.204

- Retain **criminal** case records **permanently**
  - retention period dictated by omission and subsequent interpretation
  - district court retention periods are linked to judgment length

Effects of §51.204

- Civil records accumulation
  - to date - at <u>minimum</u>, 10 years worth
    - problem - value assessment clause
    - response - initial retention determination
  - projected - 10 years worth
- Criminal records accumulation
  - to date - almost 20 years worth
  - projected - infinite amount

Main Actions to Consider

- Change statute to reduce retention period of criminal records
  - Pro - cost effective
  - Con - may need criminal records
  - Cost - none

States' Criminal Case Retention Periods

Criminal Case Retention Period	Number of States
Retain permanently (on microfilm)	25 (9)
More than 10 yrs	7
10 yrs or less	7

- 39 states have intermediate appellate courts
- Nearly two-thirds retain records permanently

States' Criminal Case Retention Periods

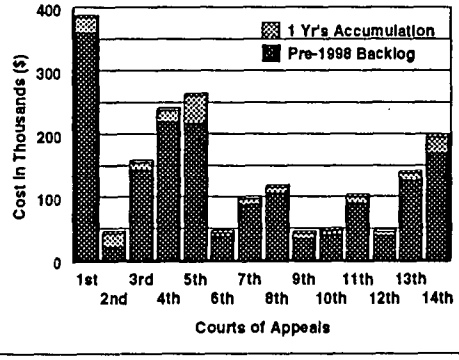
Retention periods for the 10 most populous states

Rank	State	Retention Period (Yrs)	Rank	State	Retention Period (Yrs)
1	CA	10	6	IL	21
2	TX	Permanent	7	OH	2
3	NY	Permanent	8	MI	20
4	FL	5	9	NJ	Perm - film
5	PA	1	10	GA	20

Main Actions to Consider

- Change records storage medium from paper to microfilm
  - pro - better access; approved archi\ medium
  - con - expensive; not cost effective
  - cost - $202,500 annually

Microfilm Cost Estimates (Criminal Records Only)



Microfilm Cost Estimates (Criminal Records Only)

For all intermediate appellate courts...

1998 Cost for Microfilming 1 Yr's Worth of Criminal Records	2008 Projected Cost for Storing Cumulative Criminal Records in Paper Format
$202,500	$97,000

New Rule 103 – Process Service

Date: 8-12-2004

To: Lisa Hobbs, Rules Attorney
Texas Supreme Court

From: Private Process Servers of Texas

Subject: **Requested requirements for any new statewide Process Service Rules & Procedures**

For any 103 Rule change, we request the following provisions be incorporated to (1) represent all process servers in Texas, (2) allow flexibility of rules across the state, and (3) protect all persons concerned with the process of service:

#1: Certification, administration, and training for process servers statewide as directed by the Texas Supreme Court.

The Supreme Court (a) sets the standards for process of service, (b) can designate who is authorized to train and certify process servers (e.g. Harris County and Texas Process Servers Assn. initially), and (c) can designate who is authorized to administrate.

This allows statewide overview and flexibility.

The Texas Drivers Licenses analogy: the state must control the issuing and authority for drivers licenses, not individual counties. One county requiring special certification places undue hardship on users statewide.

#2: To be a certified process server, all applicants must have a Criminal Background Check (finger printing) through the Department of Public Safety, before they take the initial certification & training course.

#3: Requirement that the certification & training courses be held at least twice per year (for whomever is designated to conduct these courses.)

#4: The Harris County Compromise:

(a) Certification & training through Harris County and/or The Texas Process Servers Association,

(b) Process servers residing in Harris County and the seven counties touching Harris County must take the Harris County course to serve papers issued from Harris County.

(c) Process servers in all the other 246 counties may take either the Harris County or the Texas Process Servers Assn. Course, and can server papers issued from all counties.

(d) Special Harris County Section can be included in the Texas Process Servers Association's curriculum.

The Supreme Court of Texas

Lisa Hobbs, Rules Attorney

Direct: 512.463.6645

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512.463.1312 Facsimile: 512.463.1365

August 11, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Rule 103 – Process Service

Dear Chip:

Justice Hecht asks that the advisory committee continue discussions on a statewide rule for serving process. We recently met with Judge Tony Lindsey, 280th District Court of Harris County. She represented that her judges would not object to a rule that allowed certification through either Harris County or the Texas Process Servers Association so long as Harris County was not required to allow a person to serve process who was not specifically certified in Harris County.

Based on these discussions, I have drafted the following alternative rules. Alternative A would simply amend the Texas Rules of Civil Procedure. Alternative B would do the same, except that it would allow the Court more flexibility, through ease of a miscellaneous court order, to respond to any unforeseen and/or changed circumstances. Alternative C, the middle ground as far as future amendments are concerned, would place the process service rule in the Rules of Judicial Administration. Naturally, Rule 536 would be similarly amended.

Alternative A **RULE 103: WHO MAY SERVE**

(a) Citation and other notices, including process, may be served anywhere by:

(1) any sheriff or constable or other person authorized by law: or

(2) by any person who is not a party to or interested in the outcome of suit and who is:

(A) certified through Harris County to serve process; or

(B) certified through the Texas Process Servers Association to serve process, except that such person may not serve process for Harris County.

(b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

Alternative B RULE 103: WHO MAY SERVE

(a) Citation and other notices, including process, may be served anywhere by:

(1) any sheriff or constable or other person authorized by law; or

(2) by any person who is not a party to or interested in the outcome of suit and who is certified to serve process as directed by the supreme court;[1] or

(3) by court order.

(b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

written

Alternative C RULE 14: Process Service

(a) Citation and other notices, including process, may be served anywhere by:

(1) any sheriff or constable or other person authorized by law: or

(2) by any person who is not a party to or interested in the outcome of suit and who is:

(A) certified through Harris County to serve process; or

(B) certified through the Texas Process Servers Association to serve process, except that such person may not serve process for Harris County.

(b) Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending.

In reviewing these draft rules—and in addition to deciding which alternative might be best—the advisory committee might consider:

- Do we need a third tear in the rule that allows the judge discretion to allow a non-certified server serve process? In other words, it is one thing to say, "If Jane is certified, you must let her serve." It is something else entirely to say, "If Jane is not certified, you cannot let her serve."

- Harris County requires process servers to submit to a background check and fingerprints. (Even private investigators who already have had a background check must re-submit.) Should we have a similar statewide requirement?

Thank you very much, Chip. I look forward to Friday's meeting.

- insurance
- good cause

Kindest Regards,

Lisa Hobbs

[1] Alternative B assumes the supreme court issues a miscellaneous order authorizing service by any person who is not a party to or interested in the outcome of suit and who is (A) certified through Harris County to serve process; or (B) certified through the Texas Process Servers Association to serve process, except that such person may not serve process for Harris County. The Court could also create a reporting requirement to the Clerk's Office or the Office of Court Administration.

or those who get an order from the Court.

DRAFT LETTER TO CHIP BABCOCK, SCAC
RETENTION AND DISPOSITION OF EXHIBITS & DEPOSITIONS

August 2, 2004

Charles L. Babcock
Bank of America Plaza
901 Main Street, Suite 6000
Dallas, TX 75202

Re: Retention and Disposition of Exhibits and Depositions

Dear Chip,

Justice Hecht asks that we discuss the retention and disposition of exhibits and deposition transcripts during the next Supreme Court Advisory Committee meeting in August. This purpose of this letter is to provide some context and background to this request.

Two procedural rules are relevant to this discussion:

> The clerk of the court in which the exhibits are filed shall retain and dispose of the same as directed by the supreme court.

TEX. R. CIV. P. 14b.

> The clerk of the court shall retain and dispose of deposition transcripts and depositions upon written questions as directed by the Supreme Court.

TEX. R. CIV. P. 191.4(e) (formerly rule 209).

The Court has issued two identical orders related to retention of these court documents.[1] These orders permit clerks to destroy exhibits and deposition transcripts in a case one year after final judgment (two years if service was by publication) upon notice to the attorneys of record.

Additionally, retention of court records other than depositions and exhibits are governed by statute. Record retention in the courts of appeals is governed partly by Texas Government Code section 51.205.[2] Retention of most trial court records is

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[1] Copies of these orders—one of which is currently reprinted in the Texas Rules of Civil Procedure following Rule 14b and the other of which was reprinted following former Texas Rule of Civil Procedure 209—are attached. The subject matter of former Rule 209 is covered now by Rule 191.4(e); however, the Court's related order is not reprinted as it was under Rule 209, at least not in either the West or Jones McClure publications.

[2] A copy of a letter to the Court from the Office of Court Administration concerning section 51.205 is attached.

governed by retention schedules promulgated by the State Library and Archives Commission pursuant to Texas Government Code section 441.158.[3]

District court clerks have complained about these procedures for some time. Their concerns are primarily with the notice provision and are essentially two-fold: (1) compliance is expensive, especially in larger counties; and (2) compliance, especially in long disposed cases, is very difficult because attorneys have often either passed away or moved. They add that courthouses are running out of record storage space and storage costs are high and increasing.

In response to these complaints, the Court created a Task Force on the Retention of Court Records—a multidisciplinary group of judges, archivists, and clerks—to study the issue. The Task Force was charged with devising a retention system that, on one hand, addressed the clerks' concerns and the practical problems of storage and disposal, yet, at the same time, also considered the potential need for the records in the judicial process and their potential historical significance.

The Task Force never made any formal recommendations to the Court. However, (then Rules Attorney) Bob Pemberton drafted a rule based on discussions during the Task Force meetings.[4] In the end, the Court never promulgated any rule related to exhibit and deposition retention. The Court's primary concern was its uncertainly about how such a rule might affect smaller counties.

Recognizing that the ability to preserve files has undoubtedly gotten less expensive since the late Nineties, Justice Hecht is now open to revisiting this important issue. Accordingly, he met recently with Charles Bacarisse, Harris County District Clerk, to discuss a draft rule his office proposed in January 2003.[5] Mr. Bacarisse hopes that a rule that allows for notice by publication will meet the spirit of Rule 14b while eliminating the cumbersome, expensive process of personal notification. Justice Hecht is sympathetic to his position.

At Justice Hecht's request, I also talked extensively with Bonnie Wolbrueck, Williamson County District Clerk. [Add any Wolbrueck comments or delete entirely.]

Please add this to the agenda for discussion during the upcoming meeting and distribute copies of this letter as appropriate.

Kind Regards,

Lisa Hobbs

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[3] Copies of current schedules DC, pertaining to district clerks, CC, pertaining to county clerks, and LC, pertaining to justice and municipal courts, are attached.

[4] A copy of that draft rule ("Rule 13") is attached.

[5] A copy of a letter to the Court from Mr. Bacarisse, with a proposed rule, is attached.

Rule 13. Effect of Signing of Pleadings, Motions and Other Papers; Sanctions

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanctions available under Rule 215–2b, upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by orders of July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.

Comment—1990

To require notice and hearing before a court determines to impose sanctions, to specify that any sanction imposed be appropriate, and to eliminate the 90–day "grace" period provided in the former version of the rule.

Historical Notes

Source

District and County Court Rule 51, unchanged.

Rule 14. Affidavit by Agent

Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or his attorney.

Oct. 29, 1940, eff. Sept. 1, 1941.

Historical Notes

Source

Vernon's Ann.Civ.St. art. 24, unchanged.

Rule 14a. Repealed by Order of April 10, 1986, eff. Sept. 1, 1986

Historical Notes

The repealed rule, which provided that the provisions of Rules 430 and 437 were to apply to appellate procedure in all other courts of the state, was added by order dated Oct. 10, 1945.

Rule 14b. Return or Other Disposition of Exhibits

The clerk of the court in which the exhibits are filed shall retain and dispose of the same as directed by the Supreme Court.

Added by order of July 20, 1966, eff. Jan. 1, 1967. Amended by order of July 15, 1987, eff. Jan. 1, 1988.

Supreme Court Order Relating to Retention and Disposition of Exhibits

In compliance with the provisions of Rule 14b, the Supreme Court hereby directs that exhibits offered or admitted into evidence shall be retained and disposed of by the clerk of the court in which the exhibits are filed upon the following basis.

This order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and; (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.

After first giving all attorneys of record thirty days written notice that they have an opportunity to claim and withdraw the trial exhibits, the clerk, unless otherwise directed by the court, may dispose of the exhibits. If any such exhibit is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.

If the exhibit is not a document or otherwise capable of reproduction, the party who offered the exhibit shall be entitled to claim same; provided, however, that the party claiming the exhibit shall provide a photograph of said exhibit to any other party upon request and payment of the reasonable cost thereof by the other party.

Effective Jan. 1, 1988.

Rule 14c. Deposit in Lieu of Surety Bond

Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash or other negotiable obligation of the government of the United States of America or any agency thereof, or with leave of court, deposit a negotiable obligation of any bank or savings and loan association chartered by the government of the United States of America or any state thereof that is insured by the government of the United States of America or any agency thereof, in the amount fixed for the surety bond, conditioned in the same manner as would be a surety bond for the protection of other parties. Any interest thereon shall constitute a part of the deposit.

Added by order of June 10, 1980, eff. Jan. 1, 1981.

Background – Potential Amendment of Rules 226a and 292

In its most recent session, the Texas Legislature added the following two provisions to Texas Civil Practice and Remedies Code § 41.003:

> (d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.
>
> (e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court: "You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

These new provisions require that changes be made to the admonitory instructions given a jury as part of the court's charge and to various other sections of Rules 226a and 292 relating to the submission of exemplary damages.

Section 41.003(d) provides that exemplary damages "may be awarded only if the jury was unanimous in regard to finding liability for ... exemplary damages." Thus, it appears that the jury must now be unanimous to *find* liability for exemplary damages and to *award* an amount of exemplary damages.

This provision does not change the law relating to the basic number of jurors required to render a verdict. Under Rule 292, the vote of at least 10 members of the jury is still necessary to render a verdict at all. Therefore, it appears that the effect of the changes to Chapter 41 is that a unanimous 12-0 vote is necessary to answer the predicate exemplary damages question "Yes," a 10-2 vote is necessary to answer the question "No," and a failure to get at least 10 jurors to agree results in a hung jury. In other words, the jury can answer "No" to a gross negligence or malice question upon the vote of 10 jurors, but must have the vote of 12 jurors to answer "Yes" to a gross negligence or malice question.

In addition, Section 41.003(d) provides that the jury must be "unanimous in regard to ... the amount of exemplary damages." Consequently, this provision provides another independent change in the requisite number of jurors required to render a verdict. Presumably, any failure to achieve a 12-0 vote on this question also results in a hung jury.

There are several items for the consideration of the full committee:

1) Two alternative proposals relative to the amendment of Rule 226a (with sample jury charges for illustration purposes); and

2) A proposal for amending Rule 292.

The proposal regarding Rule 292 is intended to make only minimal changes in the existing rule consistent with the referenced statutory mandate. In fact, the proposed new language tracks the language of the statute as closely as possible.

The alternatives regarding Rule 226a are, of necessity, more extensive. Background information is included with each. In addition, the transcript of the last SCAC meeting (which included substantial background and discussion of these issues) is also available for review.

REVISIONS TO TEXAS RULE OF CIVIL PROCEDURE 226a

Several specific changes must be made to Rule 226a to reflect the mandate of § 41.003. First, the part of the current rule providing that a verdict may be rendered on the vote of ten or more jurors is no longer accurate and must be changed. The following alternative is suggested:

> Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

This proposed instruction accounts for the requirement of a unanimous vote for exemplary damages by using the phrase "unless otherwise instructed". The instruction relating to unanimity must be given with the exemplary damage questions themselves. Thus, the jury will be "otherwise instructed" with respect to their vote on those questions.

The proposed instruction also corrects an existing problem by providing that "the same group of at least ten" may agree on the answers. Currently, Rule 226a states that "the same ten or more" jurors must agree on all questions. This incorrectly suggests that if any question is answered upon the vote of eleven jurors, it is not possible to answer other questions upon the vote of only ten jurors. The proposed instruction clarifies that only ten, but the same ten, jurors are needed to render a verdict (unless otherwise instructed).

Second, it is proposed that the verdict form be divided into two parts in cases involving exemplary damages. Part 1 of the verdict form will consist of all questions relating to liability and compensatory damages. Part 2 will consist of the questions pertaining to exemplary damages including the predicate question for exemplary damages. The jury will certify their verdict as to each part separately with a two-part certificate similar to the current certificate. The certificates follow the last question of each part. The language of the certificates has been changed to modernize the usage and to have the jury certify 1) whether they are unanimous or not, 2) whether they have answered as instructed, and 3) whether they agree on all of the answers given.

Section 41.003 clearly requires unanimity for a "Yes" finding to award exemplary damages. It also requires unanimity as to the amount of exemplary damages. However, Section 41.003 does not specifically address whether the jury must have been unanimous as to the underlying liability question in order to consider awarding exemplary damages at all. In the proposal, the jury is instructed to answer the exemplary damage predicate question only if they are unanimous in answering "Yes" to the underlying predicate liability question. The reasoning behind this is: if the vote on the underlying liability question is less than unanimous, not all jurors are convinced the defendant is liable. In such a case, it would be impossible for the jurors who did not believe the defendant was liable at all to then find that the defendant's conduct met the requirements for exemplary damages. For example, it is inconsistent for a juror to vote "No" when asked if the defendant is negligent, but vote "Yes" when asked if the defendant is grossly negligent. Those two answers simply cannot legally coexist. Therefore, if the jury must be

unanimous in finding a defendant grossly negligent, it must also be unanimous in finding the defendant negligent.

This same concept applies to all other types of underlying liability questions that could be the basis for the award of exemplary damages. However, it does not mean that the jury's answer to the underlying liability question has to be unanimous. Compensatory damages may still be awarded on a 10-2 vote of the jury. It simply means that the jury should be instructed that it should not answer the exemplary damages questions if it was not unanimous in regard to the underlying predicate liability question. This reasoning is reflected in the new instructions that are proposed.

In multiple defendant cases, there will also need to be a separate exemplary damages predicate question for each defendant rather than a single question with multiple blanks. This is because the jury may be unanimous as to the underlying liability of one defendant but 10-2 as to the underlying liability of another defendant. In such an event, the jury should not consider the exemplary damages predicate question for any defendant as to which the vote on the underlying liability question was less than unanimous. Thus, a single exemplary damages instruction that explicitly (or impliedly) references multiple defendants could create confusion and promote inconsistent answers.

Proposal

RULE 226a INSTRUCTIONS TO JURY PANEL AND JURY

The court must give such instructions to the jury panel and to the jury as are prescribed by the Supreme Court.

. . . . [Admonitory Instructions Omitted]

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions with such modifications as the circumstances of the particular case may require:

Ladies and Gentlemen of the Jury:

. . . . [Text Omitted]

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

. . . . [Text Omitted]

Certificate For Part 1

If you are unanimous as to every answer, the presiding juror must certify the verdict on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions as instructed, the jury is unanimous as to every answer, and the jury returns the above answers into court as its verdict.

_____

SIGNATURE OF PRESIDING JUROR

_____

PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer, the jurors who have agreed to each answer must certify the verdict by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions as instructed, the undersigned group of us has agreed as to every answer, and we return the above answers into court as our verdict.

	SIGNATURE OF JUROR	PRINTED NAME
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

EXEMPLARY DAMAGES

Certain cases may present issues as to exemplary damage liability for one or more defendants. The submission of a question on the exemplary damage liability of a defendant must be predicated on a unanimous jury finding on one or more underlying claims against that defendant for liability for actual damages. An award of exemplary damages against a defendant must also be the result of a unanimous jury finding on the issues of liability for and amount of exemplary damages.

In such cases, the Court should provide instructions (with such modifications as the circumstances of a particular case require) and a separate jury certificate as set forth below.

Part 2

Answer Question _____ below only if: (1) you answered "Yes" as to [*insert name of relevant defendant*] in response to Question _____ [on underlying liability], and (2) you were unanimous in answering "Yes" as to Question _____ as to [*relevant defendant*]. Otherwise, do not answer Question _____.

You are instructed that in order to answer "Yes" to Question _____, you must be unanimous. You may answer "No" to Question _____ upon a vote of 10 or more jurors.

Question _____

[*Insert Exemplary Damage Liability Question*]

Answer Question _____ only if you answered "Yes" as to [*the relevant Defendant*] in response to Question _____. Otherwise, do not answer Question _____.

You are instructed that in order to find exemplary damages, your answer to Question _____ must be unanimous.

Question _____

[*Insert Question on Amount of Exemplary Damages*]

Certificate For Part 2

If you are unanimous as to every answer in Part 2, the presiding juror must certify the verdict in Part 2 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 2 as instructed, the jury is unanimous as to every answer in Part 2, and the jury returns the above answers into court as its verdict on Part 2.

_____

SIGNATURE OF PRESIDING JUROR

_____

PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 2, the jurors who have agreed to each answer in Part 2 must certify the verdict as to Part 2 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 2 as instructed, the undersigned group of us has agreed as to every answer in Part 2, and we return the above answers into court as our verdict on Part 2.

	SIGNATURE OF JUROR	PRINTED NAME
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

Sample Jury Charge

CAUSE NO. 123,456

PAUL PAYNE	§	***IN THE DISTRICT***
Plaintiff,	§	***COURT OF***
	§	
vs.	§	_____ ***COUNTY,***
	§	***TEXAS***
DON DAVIS	§	
Defendant.	§	_____ ***JUDICIAL***
	§	***DISTRICT***

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

[Instructions Omitted]

PART 1

QUESTION NO. 1

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

a. Paul Payne _____

b. Don Davis _____

Answer Question No. 2 if you have answered "Yes" to Question No. 1 for both persons named in Question No. 1. Otherwise, do not answer Question No. 2.

QUESTION NO. 2

With respect to causing or contributing to cause in any way the injury to Paul Payne, find the percentage of negligence, if any, attributable as between or among those listed below.

The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The negligence attributable to any one named below is not necessarily measured by the number of acts or omissions found.

a. Paul Payne _____

b. Don Davis _____

TOTAL 100%

Answer Question No. 3 if you answered "Yes" as to Don Davis in response to Question No. 1 and: (1) you answered "No" for Paul Payne in response to Question No. 1, or (2) you answered 50 percent or less for Paul Payne in response to Question No. 2. Otherwise, do not answer Question No. 3.

QUESTION NO. 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Paul Payne for his injuries, if any, that resulted from the occurrence in question?

Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Paul Payne.

Answer in dollars and cents for damages, if any, that—

were sustained in the past: $_____

in reasonable probability will be sustained in the future: $_____

Certificate For Part 1

If you are unanimous as to every answer in Part 1, the presiding juror must certify the verdict in Part 1 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 1 as instructed, the jury is unanimous as to every answer in Part 1, and the jury returns the above answers into court as its verdict on Part 1.

_____
SIGNATURE OF PRESIDING JUROR

_____
PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 1, the jurors who have agreed to each answer in Part 1 must certify the verdict as to Part 1 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 1 as instructed, the undersigned group of us has agreed as to every answer in Part 1, and we return the above answers into court as our verdict on Part 1.

	SIGNATURE OF JUROR	PRINTED NAME
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

PART 2

Answer Question 4 below only if: (1) you answered "Yes" as to Don Davis in response to Question 1, and (2) you were unanimous in answering "Yes" as to Question 1. Otherwise, do not answer Question 4.

You are instructed that in order to answer "Yes" to Question 4, you must be unanimous. You may answer "No" to Question 4 upon a vote of 10 or more jurors.

QUESTION NO. 4

Was the negligence of Don Davis "gross negligence"?

> "Gross negligence" means an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.
>
> Answer "Yes" or "No": _____

Answer Question No. 5 only if you answered "Yes" as to Don Davis in response to Question No. 4. Otherwise, do not answer Question No. 5.

You are instructed that, in order to find exemplary damages, your answer to Question No. 5 must be unanimous.

QUESTION NO. 5

What sum of money, if any, should be assessed against Don Davis and awarded to Paul Payne as exemplary damages for the conduct found in response to Question 4?

> "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor non-economic damages. "Exemplary damages" include punitive damages.
>
> In determining the amount of exemplary damages you should consider evidence, if any, relating to:
>
> a. The nature of the wrong.
> b. The character of the conduct involved.
> c. The degree of culpability of the wrongdoer.
> d. The situation and sensibilities of the parties concerned.

e. The extent to which such conduct offends a public sense of justice and propriety.

f. The net worth of Don Davis.

Answer in dollars and cents, if any: $_____

Certificate For Part 2

If you are unanimous as to every answer in Part 2, the presiding juror must certify the verdict in Part 2 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 2 as instructed, the jury is unanimous as to every answer in Part 2, and the jury returns the above answers into court as its verdict on Part 2.

_____

SIGNATURE OF PRESIDING JUROR

_____

PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 2, the jurors who have agreed to each answer in Part 2 must certify the verdict as to Part 2 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 2 as instructed, the undersigned group of us has agreed as to every answer in Part 2, and we return the above answers into court as our verdict on Part 2.

	SIGNATURE OF JUROR	PRINTED NAME
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____

9. _____ _____

10. _____ _____

11. _____ _____

RULE 292. Verdict by Portion of Original Jury

(a) **Except as otherwise provided in subsection (b) of this rule,** a verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten **or more** members of an original jury of twelve or of the same five **or more** members of an original jury of six. However, where as many as three jurors die or be disabled from sitting and there are only nine of the jurors remaining of an original jury of twelve, those remaining may render and return a verdict. If less than the original twelve or six jurors render a verdict, the verdict must be signed by each juror concurring therein.

(b) **A verdict may be rendered awarding exemplary damages only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.**

] directly out of Civ Prac Rem Code

ambiguity in statute that will have to resolve.

Overview - 226(a)

Several members of the sub-committee felt that the statutory change brought about by House Bill 4 does not require a unanimous finding on ***all*** underlying liability questions. Rather, there is an argument (a persuasive one we believe) that HB 4 only requires a unanimous finding on the liability question that gives rise to the award of exemplary damages (referred to by some as the "Trigger question"). As a threshold matter, the issue of whether HB 4 requires all liability questions to be unanimous or only those that are the "Trigger questions" is a matter of statutory construction which should be decided by Texas courts and not this committee.

Nevertheless, if one accepts that HB 4 does not require unanimity for all liability questions, requiring unanimity in all such questions would impose obligations on a plaintiff and that greater than what is mandated by statute. One justification for imposing these additional requirements is apparently to avoid a conflict in the jury's findings. Proponents of the non-unanimous verdict form set forth below believe that requiring unanimity in order to avoid a conflict in the charge goes too far and is not necessary.

First, there are many instances where a jury could vote 10-2 on one liability question and 12-0 on another liability question and the Trigger question, in which case the verdict would not be in conflict. For example, a jury could vote 10-2 finding negligence and vote 12-0 finding breach of fiduciary duty, and 12-0 on a malice question. There are many other examples where, in all likelihood, a trial or appellate court would not find such jury findings to be in conflict with one another.

The most frequently cited example of a potential conflict in the charge involves negligence and gross negligence. A juror might be able to find, however, that the defendant was negligent, but that such negligence was not the proximate cause of the injury and thus answer the negligence questions "No." In that scenario, the juror could still find that the conduct was grossly negligent. In other words, it is possible that a juror could vote "No" on negligence and "Yes" on gross negligence without creating a conflict in the jury findings. Moreover, if a juror votes "No" on negligence because he or she does not believe that the defendant's conduct rises to the level of negligence, it is a virtual certainty that the juror will vote "No" on the question of gross negligence-meaning there is no need for additional conditioning.

Further, if unanimity is not required for all liability questions, it would not be necessary to have a separate Trigger question for each defendant in multi-defendant cases. Rather, there could be one Trigger question with a space provided for each defendant and an instruction that the jury must be unanimous in order to answer "Yes" as to any defendant.

In short, the proponents of the charge and Rule 226a changes listed below believe that the any potential for conflict in the jury charge is minimal and what little potential there is can be handled by the trial courts and reviewed by the appellate courts. The proponents believe that handling potential conflicts in this manner is better than the additional burdens created by requiring unanimity in all liability questions as a predicate to answering the Trigger question.

Proposal

RULE 226a INSTRUCTIONS TO JURY PANEL AND JURY

The court must give such instructions to the jury panel and to the jury as are prescribed by the Supreme Court.

. . . . [Admonitory Instructions Omitted]

COURT'S CHARGE

Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions with such modifications as the circumstances of the particular case may require:

Ladies and Gentlemen of the Jury:

. . . . [Text Omitted]

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

. . . . [Text Omitted]

Certificate For Part 1

If you are unanimous as to every answer, the presiding juror must certify the verdict on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions as instructed, the jury is unanimous as to every answer, and the jury returns the above answers into court as its verdict.

_____

SIGNATURE OF PRESIDING JUROR

_____

PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer, the jurors who have agreed to each answer must certify the verdict by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions as instructed, the undersigned group of us has agreed as to every answer, and we return the above answers into court as our verdict.

	SIGNATURE OF JUROR	PRINTED NAME OF JUROR
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

EXEMPLARY DAMAGES

Certain cases may present issues as to exemplary damage liability for one or more defendants. An award of exemplary damages against a defendant must be the result of a unanimous jury finding on the issues of liability for and the amount of exemplary damages.

In such cases, the Court should provide instructions and a separate jury certificate as set forth below.

Part 2

If you have answered "Yes" to Question _ [underlying liability question(s)] as to any person named below, then answer the following question as to that person. Otherwise, do not answer the following question.

You are instructed that in order to answer "Yes" to the following question as to any person named below, you must be unanimous. You may answer "No" to the following question as to any person named below upon a vote of 10 or more jurors.

Question _____

[*Insert Exemplary Damage Liability Question*]

If you have answered "Yes" to Question _ [exemplary damage predicate question(s)] as to any person named below, then answer the following question as to that person. Otherwise, do not answer the following question.

You are instructed that, in order for you to find exemplary damages as to any person named below, your answer to the following question regarding the amount of such damages must be unanimous.

Question _____

[*Insert Question on Amount of Exemplary Damages*]

Certificate For Part 2

If you are unanimous as to every answer in Part 2, the presiding juror must certify the verdict in Part 2 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 2 as instructed, the jury is unanimous as to every answer in Part 2, and the jury returns the above answers into court as its verdict on Part 2.

_____

SIGNATURE OF PRESIDING JUROR

_____

PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 2, the jurors who have agreed to each answer in Part 2 must certify the verdict as to Part 2 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 2 as instructed, the undersigned group of us has agreed as to every answer in Part 2, and we return the above answers into court as our verdict on Part 2.

	SIGNATURE OF JUROR	PRINTED NAME OF JUROR
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

CAUSE NO. 123,456

PAUL PAYNE	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
vs.	§	**_____ COUNTY, T E X A S**
	§	
DON DAVIS	§	
Defendant.	§	**_____ JUDICIAL DISTRICT**

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

[Instructions omitted]

PART I

QUESTION NO. 1

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

a. Paul Payne _____

b. Don Davis _____

Answer Question No. 2 if you have answered "Yes" to Question No. 1 for both persons named in Question No. 1. Otherwise, do not answer Question No. 2.

QUESTION NO. 2

With respect to causing or contributing to cause in any way the injury to Paul Payne, find the percentage of negligence, if any, attributable as between or among those listed below.

The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The negligence attributable to any one named below is not necessarily measured by the number of acts or omissions found.

a. Paul Payne _____

b. Don Davis _____

TOTAL 100%

Answer Question No. 3 if you answered "Yes" as to Don Davis in response to Question No. 1 and: (1) you answered "No" for Paul Payne in response to Question No. 1, or (2) you answered 50 percent or less for Paul Payne in response to Question No. 2. Otherwise, do not answer Question No. 3.

QUESTION NO. 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Paul Payne for his injuries, if any, that resulted from the occurrence in question?

Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Paul Payne.

Answer in dollars and cents for damages, if any, that—

were sustained in the past: $_____

in reasonable probability will be sustained in the future: $_____

Certificate For Part 1

If you are unanimous as to every answer in Part 1, the presiding juror must certify the verdict in Part 1 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 1 as instructed, the jury is unanimous as to every answer in Part 1, and the jury returns the above answers into court as its verdict on Part 1.

_____
SIGNATURE OF PRESIDING JUROR

_____
PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 1, the jurors who have agreed to each answer in Part 1 must certify the verdict as to Part 1 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 1 as instructed, the undersigned group of us has agreed as to every answer in Part 1, and we return the above answers into court as our verdict on Part 1.

	SIGNATURE OF JUROR	PRINTED NAME OF JUROR
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

PART 2

If you have answered "Yes" to Question _ [underlying liability question(s)] as to any person named below, then answer the following question as to that person. Otherwise, do not answer the following question.

You are instructed that in order to answer "Yes" to the following question as to any person named below, you must be unanimous. You may answer "No" to the following question as to any person named below upon a vote of 10 or more jurors.

QUESTION NO. 4

Was the negligence of Don Davis "gross negligence"?

"Gross negligence" means an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No" with respect to each of the following:

a. Don Davis _____

b. Davis Corporation _____

If you have answered "Yes" to Question _ [exemplary damage predicate question(s)] as to any person named below, then answer the following question as to that person. Otherwise, do not answer the following question.

You are instructed that, in order for you to find exemplary damages as to any person named below, your answer to the following question regarding the amount of such damages must be unanimous.

QUESTION NO. 5

What sum of money, if any, should be assessed against Don Davis and awarded to Paul Payne as exemplary damages for the conduct found in response to Question 4?

"Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor non-economic damages. "Exemplary damages" includes punitive damages.

In determining the amount of exemplary damages you should consider evidence, if any, relating to:

a. The nature of the wrong.
b. The character of the conduct involved.
c. The degree of culpability of the wrongdoer.
d. The situation and sensibilities of the parties concerned.
e. The extent to which such conduct offends a public sense of justice and propriety.
f. The net worth of Don Davis.

Answer in dollars and cents, if any, with respect to each of the following:

a. Don Davis $_____

b. Davis Corporation $_____

Certificate For Part 2

If you are unanimous as to every answer in Part 2, the presiding juror must certify the verdict in Part 2 on behalf of the jury by signing in the space provided below.

I, the Presiding Juror of the jury, certify that the jury has answered the above and foregoing questions in Part 2 as instructed, the jury is unanimous as to every answer in Part 2, and the jury returns the above answers into court as its verdict on Part 2.

_____
SIGNATURE OF PRESIDING JUROR

_____
PRINTED NAME OF PRESIDING JUROR

If you are not unanimous as to every answer in Part 2, the jurors who have agreed to each answer in Part 2 must certify the verdict as to Part 2 by signing in the spaces provided below.

We, members of the jury, certify that we have answered the above and foregoing questions in Part 2 as instructed, the undersigned group of us has agreed as to every answer in Part 2, and we return the above answers into court as our verdict on Part 2.

	SIGNATURE OF JUROR	PRINTED NAME OF JUROR
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

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October 29, 2002

FEDERAL EXPRESS

Mr. Charles L. Babcock, Chair
Supreme Court Advisory Committee
Jackson & Walker L.L.P.
1100 Louisiana Street, Suite 4200
Houston, Texas 77002

Dear Chip:

The Evidence Subcommittee of the Supreme Court Advisory Committee has considered several matters and has recommendations on several matters that have not been brought to the attention of the full Supreme Court Advisory Committee. I recommend that all these matters be presented at our upcoming meeting. I am attaching disposition chart and attachments on all these matters and ask that you make them available to all members of the Supreme Court Advisory Committee so that we can discuss these. I don't anticipate any of them will take very long except the Rule 509 (Ex Parte Communications with Plaintiff's Doctor).

Thank you very much.

Sincerely,

Buddy

Buddy Low

BL:cc

Enclosures

DISPOSITION CHART
TEXAS RULES OF EVIDENCE AGENDA
AUGUST 13-14, 2004

RULE NO.	HISTORY	RECOMMENDATION OF EVIDENCE SUBCOMMITTEE	REASONS
705	Referred by SBOT Administration of Rules of Evidence Committee	Adopt amended rule that is attached. *Also attached is rule recommended by SBOT Administration of Rules of Evidence Committee, as well as copy of amended Federal Rule 703 and present Texas Rule 705.	Consistent with Federal Rule 703 and applicable language in Texas Rule 403. *Also attached is Texas Rule 403.
407(b)	Referred by SBOT Administration of Rules of Evidence Committee	Adopt the rule as recommended by SBOT Administration of Rules of Evidence Committee. Recommended rule attached. *Also attached is report of SBOT Administration of Rules of Evidence Committee.	To make clear the rights of "innocent sellers" within the meaning of House Bill 4 in light of amendment to Evidence Rule 407(a)
509 or 514(new) – Possible amendment to 510	Referred by Bill Edwards – concerning ex parte conversations with a doctor under Exception (e)(4) to 509	Majority of Evidence Subcommittee recommends John Martin version as amended and recommended by majority of the Evidence Subcommittee. Minority of Evidence Subcommittee saw merit in SBOT Administration of Rules of Evidence Committee recommendation with possible amendments.	Evidence Subcommittee felt that it is difficult to draw a rule that complies with all federal and state statutes pertaining to protected health care information and peer review statutes. SBOT Administration of Rules of Evidence Committee felt their version appropriately complies with all current law and gives a more definite guideline to attorneys.

			Attachments: (1) Evidence Subcommittee proposed rule; (2) SBOT Administration of Rules of Evidence Committee proposed rule; (3) Correspondence between myself, John Martin and Jeff Boyd concerning SBOT Administration of Rules of Evidence Committee rule and report; (4) Heretofore forwarded and posted on SCAC website is Summary of HIPPA Regulations and SBOT Administration of Rules of Evidence Committee report

PROPOSED CHANGE TO TEXAS RULE OF EVIDENCE 705.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The only changes to Texas Rule of Evidence 705 are:

(a) Where we refer to subparagraph (d) and in paragraph (d) wherein we adopt the federal language verbatim. Also, there is a comment to this change.

PROPOSED CHANGE TO TEXAS RULE OF EVIDENCE 705.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts and Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. Subject to subparagraph (d) the expert may disclose on direct examination, or may be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is bases. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do no provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c) and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.

Proposed additional comment: The changes to subparagraph (d) are based on the recent changes to Federal Rule of Evidence 703.

III. PROPOSED CHANGES TO TEXAS RULE OF EVIDENCE 705, FROM AREC PROPOSAL OF JUNE 2002, RED-LINED AGAINST THE CURRENT RULE, WHICH IS IN REGULAR TYPE. ~~PROPOSED DELETIONS LOOK LIKE THIS~~, AND PROPOSED ADDITIONS LOOK LIKE THIS.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. Subject to paragraph (d), ~~T~~the expert may ~~in any event~~ disclose on direct examination, or be required to disclose ~~,~~ on cross-examination, the underlying facts or data.

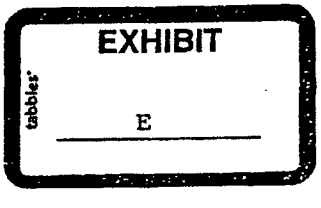
(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, ~~the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or areunfairly prejudicial.~~ the underlying facts or data shall not be disclosed by the proponent unless the proponent establishes that their probative value in evaluating the expert's opinion outweighs their prejudicial effect. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert.



Tanner v. Westbrook, 174 F.3d 542, 546 (5th Cir. 1999). Defendant, "in its motion for an FRE 104 hearing, called the [P's] experts' opinions on causation 'sufficiently into question,' by providing conflicting medical literature and expert testimony."

FRE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Cross references to FRE 703: *Commentaries*, "Introducing Testimony," ch. 8-C, §4, p. 434; 2000 Notes to FRE 703, p. 1053.

Source of FRE 703: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1937; Mar. 2, 1987, eff. Oct. 1, 1987.

In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 747 (3d Cir.1994). "While [FRE] 702 focuses on an expert's methodology, [FRE] 703 focuses on the data underlying the expert's opinion. [¶] We have held that the district judge must make a factual finding as to what data experts find reliable ... and that if an expert avers that his testimony is based on a type of data on which experts reasonably rely, that is generally enough to survive the Rule 703 inquiry."

FRE 704. OPINION ON ULTIMATE ISSUE

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Source of FRE 704: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1937; Pub. L. 98-473, title II, §406, Oct. 12, 1984, 98 Stat. 2067.

Burkhart v. Washington Metro. Area Transit Auth., 112 F.3d 1207, 1212-13 (D.C. Cir.1997). "[A]n expert may offer his opinion as to facts that, if found, would support a conclusion that the legal standard at issue was satisfied, but he may not testify as to whether the legal standard has been satisfied."

Woods v. Lecureux, 110 F.3d 1215, 1220 (6th Cir. 1997). "[T]estimony offering nothing more than a legal conclusion—i.e., testimony that does little more than tell the jury what result to reach—is properly excludable under the [FREs]."

Lightfoot v. Union Carbide Corp., 110 F.3d 898, 911 (2d Cir.1997). The FREs "allow a lay witness to testify in the form of an opinion.... The fact that the lay opinion testimony bears on the ultimate issue in the case does not render the testimony inadmissible."

FRE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Source of FRE 705: Pub. L. 93-595, §1, Jan. 2, 1975, 88 Stat. 1938; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993.

B.F. Goodrich v. Betkoski, 99 F.3d 505, 525 (2d Cir. 1996). "An expert's testimony, in order to be admissible under [FRE] 705, need not detail all the facts and data underlying his opinion in order to present that opinion."

University of R.I. v. A.W. Chesterton Co., 2 F.3d 1200, 1218 (1st Cir.1993). FRE 703 & 705 "normally relieve the proponent of expert testimony from engaging in the awkward art of hypothetical questioning, which involves the ... process of laying a full factual foundation *prior* to asking the expert to state an opinion. In the interests of efficiency, the [FREs] deliberately shift the burden to the cross-examiner to ferret out whatever empirical deficiencies may lurk in the expert opinion. Nevertheless, Rules 703 and 705 do not afford automatic entitlements to proponents of expert testimony. [U]nder the broad exception to Rule 705 ... the trial court is given considerable latitude over the order in which evidence will be presented to the jury."

FRE 706. COURT APPOINTED EXPERTS

(a) **Appointment.** The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may

TRE 703. BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Comment to 1998 change: The former Civil Rule referred to facts or data "perceived by or reviewed by" the expert. The former Criminal Rule referred to facts or data "perceived by or made known to" the expert. The terminology is now conformed, but no change in meaning is intended.

See *Commentaries*, "Introducing Evidence," ch. 8-C; "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 685 (2001).

History of TRE 703 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Amended eff. Sept. 1, 1990, by order of Apr. 24, 1990 (785-86 S.W.2d [Tex.Cases] cvii): Changed the words "made known to him" to "reviewed by the expert."; this amendment conforms TRE 703 to the rules of discovery by using the term "reviewed by the expert." See former TRCP 166b. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 703.

Merrell Dow Pharms., Inc. v. Havner, 953 S.W.2d 706, 711 (Tex.1997). "The substance of the [expert's] testimony must be considered. *At 712:* [A]n expert's bald assurance of validity is not enough. *At 713:* The underlying data should be independently evaluated in determining if the opinion itself is reliable."

Stam v. Mack, 984 S.W.2d 747, 750 (Tex.App.—Texarkana 1999, no pet.). TRE 703 and 705 "now allow a testifying expert to relate on direct examination the reasonably reliable facts and data on which he relied in forming his opinion, subject to an objection under [TRE] 403 that the probative value of such facts and data is outweighed by the risk of undue prejudice. ... The details of those facts and data may be brought out on cross-examination pursuant to [TRE] 705(a), 705(b), and 705(d). Moreover, the opponent of such evidence may ask for a limiting instruction if he fears the evidence may be used for a purpose other than support for the testifying expert's opinion."

Sosa ex rel. Grant v. Koshy, 961 S.W.2d 420, 427 (Tex.App.—Houston [1st Dist.] 1997, pet. denied). "Under rule 703, Officer Null, as an expert on accident reconstruction, properly relied on hearsay evidence provided by eyewitnesses to the accident if experts in his field would reasonably rely on such evidence."

TRE 704. OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 697 (2001).

History of TRE 704 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 704.

Birchfield v. Texarkana Mem. Hosp., 747 S.W.2d 361, 365 (Tex.1987). "Fairness and efficiency dictate that an expert may state an opinion on a mixed question of law and fact as long as the opinion is confined to the relevant issues and is based on proper legal concepts." An expert may testify that conduct constituted "negligence" and "gross negligence," and that certain acts were "proximate causes" of the plaintiff's injuries.

Dickerson v. DeBarbieris, 964 S.W.2d 680, 690 (Tex.App.—Houston [14th Dist.] 1998, no pet.). "Although rule 704 allows an expert to state an opinion on a mixed question of law and fact, it does not permit an expert to state an opinion or conclusion on a pure question of law because such a question is exclusively for the court to decide and is not an ultimate issue to be decided by the trier of fact."

Isern v. Watson, 942 S.W.2d 186, 193 (Tex.App.—Beaumont 1997, pet. denied). "[B]efore a testifying expert's opinion can be rendered [on negligence, gross negligence, or proximate cause], a predicate must be laid showing that the expert is familiar with the proper legal definition in question."

TRE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be

permitted to conduct a *voir dire* examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Comment to 1998 change: Paragraphs (b), (c), and (d) are based on the former Criminal Rule and are made applicable to civil cases. This rule does not preclude a party in any case from conducting a *voir dire* examination into the qualifications of an expert.

See Cochran, *Texas Rules of Evidence Handbook*, p. 704 (2001).

History of TRE 705 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lx). Amended eff. Nov. 1, 1984, by order of June 25, 1984 (669-70 S.W.2d [Tex.Cases] xxxviii): Added "disclose on direct examination, or" and "on cross-examination" to last sentence. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] lv). Source: FRE 705.

TRE 705

Weiss v. Mechanical Assoc. Servs., 989 S.W.2d 120, 124-25 (Tex.App.—San Antonio 1999, pet. denied). "The non-exclusive list of factors the court may consider in deciding admissibility [under TRE 705(c)] includes the extent to which the theory has been or can be tested, the extent to which the technique relies upon the subjective interpretation of the expert, whether the theory has been subjected to peer review and/or publication, the technique's potential rate of error, whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community, and the non-judicial uses that have been made of the theory or technique."

Stam v. Mack, 984 S.W.2d 747, 750 (Tex.App.—Texarkana 1999, no pet.). See Annotation in TRE 703.

TRE 706. AUDIT IN CIVIL CASES

Despite any other evidence rule to the contrary, verified reports of auditors prepared pursuant to Rule of Civil Procedure 172, whether in the form of summaries, opinions, or otherwise, shall be admitted in evidence when offered by any party whether or not the facts or data in the reports are otherwise admissible and whether or not the reports embrace the ultimate issues to be decided by the trier of fact. Where exceptions to the reports have been filed, a party may contradict the reports by evidence supporting the exceptions.

See Cochran, *Texas Rules of Evidence Handbook*, p. 720 (2001).

History of TRE 706 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] lxi). Adopted eff. Jan. 1, 1988, by order of July 15, 1987 (733-34 S.W.2d [Tex.Cases] xcvii): To conform to TRCP 172. Source: New rule.

Lovelace v. Sabine Consol., Inc., 733 S.W.2d 648, 656 (Tex.App.—Houston [14th Dist.] 1987, writ denied). "The audit report before this court contains no such affidavit as is required by [TRCP] 172. ... Further, 6 days before trial [P] filed an objection to the audit. Therefore, the trial court did not err in admitting evidence that contradicted and supplemented the auditor's report."

ARTICLE VIII. HEARSAY

TRE 801. DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written verbal expression or (2) nonverbal conduct of a person, if it is intended by the person as a substitute for verbal expression.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Matter Asserted. "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.

(d) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(e) Statements Which Are Not Hearsay. A statement is not hearsay if:

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding except a grand jury proceeding in a criminal case, or in a deposition;

this Court were to take judicial notice of the ordinance [Ps] proffered, there is no showing that this is the version of the ordinance on which the district court rendered its judgment. To enable an appellate court to review a municipal or county ordinance, parties must both comply with the provisions of [TRE] 204 and make the ordinance a part of the trial-court record."

ARTICLE III. PRESUMPTIONS

[No rules adopted at this time.]

ARTICLE IV. RELEVANCY & ITS LIMITS

TRE 401. DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

See Cochran, *Texas Rules of Evidence Handbook*, p. 193 (2001).

History of TRE 401 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] xxxvii). Amended eff. Nov. 1, 1984, by order of June 25, 1984 (669-70 S.W.2d [Tex.Cases] xxxiii): Title and entire rule were changed. Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] xxxix). Source: FRE 401.

E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex.1995). "[T]o constitute scientific knowledge which will assist the trier of fact, the proposed [scientific] testimony must be relevant and reliable. [¶] The requirement that the proposed testimony be relevant incorporates traditional relevancy analysis under [TRE] 401 and 402.... To be relevant, the proposed testimony must be 'sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.'"

Transportation Ins. Co. v. Moriel, 879 S.W.2d 10, 24-25 (Tex.1994). "Simply because a piece or pieces of evidence are *material* in the sense that they make a 'fact that is of consequence to the determination of the action more ... or less probable' does not render the evidence *legally sufficient*. As Professor McCormick succinctly put it, 'a brick is not a wall.'"

Castillo v. State, 939 S.W.2d 754, 758 (Tex.App.—Houston [14th Dist.] 1997, writ ref'd). "The evidence need not prove or disprove a particular fact; the evidence is sufficiently relevant if it provides 'a small nudge' towards proving or disproving any fact of consequence. Furthermore, '[t]he motives which operate upon the mind of a witness when he testifies are never regarded as immaterial or collateral matters.'"

TRE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 193 (2001).

History of TRE 402 (civil): Amended eff. Mar. 1, 1998, by order of Feb. 25, 1998 (960 S.W.2d [Tex.Cases] xxxvii). Adopted eff. Sept. 1, 1983, by order of Nov. 23, 1982 (641-42 S.W.2d [Tex.Cases] xxxix). Source: FRE 402.

E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 556 (Tex.1995). "Evidence that has no relationship to any of the issues in the case is irrelevant and does not satisfy [TRE] 702's requirement that the testimony be of assistance to the jury. It is thus inadmissible under [TRE] 702 as well as under [TRE] 401 and 402."

Lunsford v. Morris, 746 S.W.2d 471, 473 (Tex. 1988). The rules of evidence do not "contemplate exclusion of otherwise relevant proof unless the evidence proffered is unfairly prejudicial, privileged, incompetent, or otherwise *legally* inadmissible. We do not circumscribe, however, a trial judge's authority to consider on motion whether a party's discovery request involves unnecessary harassment or invasion of personal or property rights."

Jampole v. Touchy, 673 S.W.2d 569, 573 (Tex. 1984), *overruled on other grounds*, ***Walker v. Packer***, 827 S.W.2d 833 (Tex.1992). "To increase the likelihood that all relevant evidence will be disclosed and brought before the trier of fact, the law circumscribes a significantly larger class of discoverable evidence [than admissible evidence] to include anything reasonably calculated to lead to the discovery of material evidence."

TRE 403. EXCLUSION OF RELEVANT EVIDENCE ON SPECIAL GROUNDS

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

See *Commentaries*, "Objecting to Evidence," ch. 8-D; Cochran, *Texas Rules of Evidence Handbook*, p. 210 (2001).

407(b)

Proposed TRE 407 (b) Amendment

(b) Notification of Defect. Nothing in paragraph (a) shall require exclusion of an otherwise admissible written notification of a defect in a product, issued by the manufacturer of the product to any purchaser of the product, as "purchaser" is defined in Section 1.201, Tex. Bus. & Comm. Code.

Tex. Bus. & Comm Code §1.201

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

3. Rule 407(b). In compliance with the mandate of the Legislature and the adoption of House Bill 4, the Supreme Court amended Rule 407(a) effective in all cases filed on and after July 1, 2003. In light of the amendments to Rule 407(a), the AREC appointed a subcommittee to evaluate whether Rule 407(b) should be amended and, if so, the form it should take. The report of the subcommittee is attached hereto. In addition to the report, the full committee perceived that 407(b) should be amended to assure that 'innocent sellers' within the meaning of HB 4 will be able to introduce recall letters and defect / flaw / problem application correspondence from upstream manufacturers and distributors as part of a complete defense for innocent sellers under new CPRC 82.003.

The Committee adopted proposed Rule 407(b) in the form attached to this report and recommends it to the Supreme Court Advisory Committee and to the Supreme Court for adoption in the Texas Rules of Evidence. The Committee notes that draft Rule 407(b) addresses recall letters addressed by the manufacturer to the broad category of users known as *purchasers* as defined by the Business and Commerce Code. The Committee notes that it is foreseeable that some recall notices or notifications of defects in products may be issued by the manufacturer to persons others than such *purchasers*, such as, for example; *learned intermediaries*. This may happen, e.g. in a hypothetical case where a drug manufacturer notifies physicians instead of patients that it has determined that certain patients may have reactions to a drug under certain circumstances and that such physicians should act accordingly, thereby qualifying as a notification of a defect but not as a written notice sent to the purchaser. The Committee did not intend that such written notifications not be admissible in evidence, but the Committee was also uncertain whether in the real world a learned intermediary would not also be within the broad view of persons in the TBCC who qualify as "purchasers". Accordingly, the Committee did not further modify proposed Rule 407(b) by inserting additional notified parties, such as learned intermediaries, but does recommend to the SCAC and to the Supreme Court further evaluation of that contingency.

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November 12, 2003

Jack W. London
Attorney at Law
114 W. 7th St., Ste 625
Austin, Texas 79701

re: Subcommittee on TRE 407

Dear Jack:

With regard to the above referenced Subcommittee of the Texas Administration of Rules of Evidence Committee, please consider this my formal report which, I assume, will be forwarded to members of the entire committee before or at our next committee meeting. Members of this committee included Mike Prince, Professor Powell, Professor Goode, Judge Garza, Mark Sales, and Peter Haskel. We met on two different occasions and discussed in length Rule 407 and the recommended changes thereto.

Background

The legislature in House Bill 4 charged the Texas Supreme Court with amending TRE 407(a) to substantially reflect Rule 407 of the Federal Rules of Evidence. The legislature specifically directed the Court to 407(a) and was silent as to TRE 407(b). In accordance with the legislative mandate the Supreme Court has proposed that Rule 407(a) read exactly as FRE 407 currently reads. Attached as Exhibit "A" you will find:

1. TRE 407 prior to House Bill 4;

2. FRE 407;

3. TRE 407, amended to reflect the language in FRE 407;

4. The subcommittee's proposed change to the language of 407(b).

5. The definition of "purchaser" and "purchase" under Texas Business and Commerce Code § 1.201.

When Rule 407 of the Texas Rules of Evidence were originally drafted, instead of following the language of FRE 407, the Texas Committee decided to adopt a version of Rule 407 as existed in the State of Maine. Accordingly, TRE 407(b) was born.

Discussion and reasoning of the subcommittee

The subcommittee did discuss possible additions and changes to TRE 407(a), but the subcommittee members quickly agreed that no further changes to TRE 407(a) would be recommended to the full body of the Administration of Rules of Evidence Committee.

Addressing TRE 407(b) there were several issues of concern in light of the language changes made in 407(a). The subcommittee felt that with the changes to TRE 407(a) that TRE 407(b) might take on additional importance. The current language of TRE 407(b) caused the subcommittee concern in two areas:

1. The current version allows only a recall notice to be entered as evidence of defect against a manufacturer. As drafted it would allow the admission of such evidence against down stream suppliers and retailers even under the theory of strict liability. The theory of strict liability contemplates liability of down stream suppliers and retailers not withstanding such suppliers and retailers committed no culpable act or omission other than merely being in the stream of commerce for the product. Accordingly, it seemed inconsistent for a manufacturer to make an admission of defect, and yet, for such not to be admissible as evidence of a defect in cases where another party in the stream of commerce is involved.

2. TRE 407(b) as written only applies to written notification by a manufacturer to ***purchasers.*** Again the subcommittee felt that the term purchaser without definition might be defined in an unduly restrictive way that would not include those parties broadly defined as purchasers under Texas Business and Commerce Code § 1.201. Looking at Exhibit "A" you will notice the definition of a purchaser is, "a person that takes by purchase" and that the definition of "purchase" means "the taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift, or any other voluntary transaction creating an interest in property."

With those considerations referenced above being primary to the subcommittee, the subcommittee proposed changes in the wording of TRE 407(b) as reflected on Exhibit "A" attached hereto.

Conclusion

The subcommittee therefore proposes the attached changes to TRE 407(b) and that such proposal be brought before the full membership of the Administration of Rules of Evidence Committee. Attached as Exhibit "B" you will find excerpts from the Texas Rules of Evidence Handbook, 5th Edition Update, which reading will facilitate the discussion of the full committee.

Very truly yours,

W. Bruce Williams

WBW:ljj

attachments

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EXHIBIT "A"

TRE 407 PRIOR TO CHANGE

SUBSEQUENT TO REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent Remedial Measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent remedial measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. Nothing in this rule shall preclude admissibility in products liability cases based on strict liability.

(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

FRE 407 (Currently)

SUBSEQUENT REMEDIAL MEASURES

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

TRE 407 (with HB 4 changes)

SUBSEQUENT TO REMEDIAL MEASURES; NOTIFICATION OF DEFECT

(a) Subsequent Remedial Measures. When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

(b) Notification of Defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

509
514

SUPREME COURT ADVISORY COMMITTEE

DRAFT PROPOSAL FOR CHANGE TO TRE 509

I. Exact wording existing Rule:

Rule 509. Physician–Patient Privilege

. . . . .

(e) Exceptions in a Civil Proceeding. Exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX.REV.CIV.STAT. art. 4495b, or of a registered nurse under or pursuant to TEX.REV.CIV.STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);

(6) in an involuntary civil commitment proceeding, proceeding for court- ordered treatment, or probable cause hearing under TEX.HEALTH & SAFETY CODE ch. 462; tit. 7, subtit. C; and tit. 7, subtit. D;

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX.HEALTH & SAFETY CODE § 242.002.

. . . . .

II. Proposed Rule:

Rule 509. Physician–Patient Privilege

. . . . .

(e) Exceptions in a Civil Proceeding. Subject to federal laws and the laws of this state relating to the confidentiality of a person's health care information, exceptions to confidentiality or privilege in administrative proceedings or in civil proceedings in court exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and in any license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on the patient's behalf submits a written consent to the release of any privileged information, as provided in paragraph (f);

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) as to a communication or record relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which any party relies upon the condition as a part of the party's claim or defense;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to the Medical Practice Act, TEX.REV.CIV.STAT. art. 4495b, or of a registered nurse under or pursuant to TEX.REV.CIV.STAT. arts. 4525, 4527a, 4527b, and 4527c, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under subparagraph (e)(1) or those patients who have submitted written consent to the release of their medical records as provided by paragraph (f);

(6) in an involuntary civil commitment proceeding, proceeding for court- ordered treatment, or probable cause hearing under TEX.HEALTH & SAFETY CODE ch. 462; tit. 7, subtit. C; and tit. 7, subtit. D;

(7) in any proceeding regarding the abuse or neglect, or the cause of any abuse or neglect, of the resident of an "institution" as defined in TEX.HEALTH & SAFETY CODE § 242.002.

. . . . .

Comment to 2004 change: This comment is intended to inform the construction and application of this rule. The U.S. Congress enacted the Health Insurance Portability

& Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (2003) on August 21, 1996. HIPAA required the Secretary of Health & Human Services to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within three years of the passage of HIPAA. Congress did not enact privacy legislation. The U.S. Department of Health & Human Services developed the Standards for Privacy of Individually Indentifiable Health Information (Privacy Rule), 45 C.F.R. §§ 160.102-164.534 (2004), which is a federal regulation defining administrative steps, policies, and procedures to safeguard individuals' personal, private health information (known as "protected health information" or "PHI"). The exceptions to confidentiality or privilege provided for in this rule are subject to HIPAA and the Privacy Rule, and possibly to other federal laws and laws of this state regarding privacy.

AREC State Bar Version 514

In civil cases, a party or party's representative may not communicate with or obtain health care information from a physician or health care provider outside of formal discovery except by (1) written authorization of the patient or the patient's representative, or (2) pursuant to a court order which specifies the scope and subject matters that may be disclosed and which states that the health care provider is under no obligation to discuss such matters outside of formal discovery. A copy of such order must be provided to the health care provider prior to any such communication or disclosure. **Evidence obtained in violation of this Rule may subject the violating party to sanctions provided in Rule 215. This rule does not prohibit a party, a physician, or a health care provider from communicating health care information to another person or party where the communication would be privileged.**

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May 10, 2004

Buddy Low
Orgain, Bell & Tucker, L.L.P.
470 Orleans Street
P.O. Box 1751
Beaumont, Texas 77704-1751

Dear Mr. Low:

Enclosed please find the Committee Report of the Administration of Rules of Evidence Committee, together with a proposed Rule 514, which addresses the HIPAA rules concerning disclosure of patient medical information and *ex parte* contacts of a party's physician.

On behalf of the Administration of Rules of Evidence Committee, we earnestly recommend to the Supreme Court Advisory Committee that it endorse our proposed Rule 514 and recommend it to the Supreme Court for adoption.

The history, analysis, and concerns which were raised by the Supreme Court Advisory Committee in its review of the HIPAA regulations have been point-by-point analyzed by the AREC in order to address each concern of the Committee. In particular, the Committee wanted to draft a rule that would conform to Federal Law, address peer review and attorney-client privileges, and give guidance to the bench, the bar, and to medical providers.

Thank you very much for your consideration of this report and the proposed rule. Please notify Mark Sales and me of any schedule of the SCAC to review these matters. Mark or I will be available to attend on behalf of the Committee.

Respectfully,

Jack W. London

JWL/cba

cc: Erin Graham
Terry Jacobson
Mark Sales
Steven Goode

FINAL REPORT REGARDING EX PARTE COMMUNICATIONS BETWEEN PHYSICIANS AND ATTORNEYS WHO DON'T REPRESENT THE PHYSICIAN'S PATIENT, HIPAA AND PROPOSED RULE 514

I. **History to this point.** Two years ago AREC was asked to study the question of whether *ex parte* communications between physicians and attorneys other than attorneys who represented the physician's patient were permissible. An AREC subcommittee was formed to study the problem and report back to the committee. While the subcommittee was studying the issue, the HIPAA rules were released for final comment by DHHS. The AREC subcommittee studying the issue, and subsequently the entire committee, concluded that the HIPAA rules addressed whether and how *ex parte* contact was permissible and, therefore, recommended the adoption of a new Rule of Evidence–Rule 514. The proposed rule was modeled after a process used by then State District Court (now Federal District Court) Judge David Godbey to deal with litigants in his court. AREC submitted its proposal and report. The SCAC, and a subcommittee of the SCAC, was also studying the issue and a member of the SCAC subcommittee studying the issue drafted a proposed amendment to existing Rule 509, which was circulated to AREC, along with several other comments and questions (the automatic exclusion sanction language and how the rule might impact peer review) pertaining to AREC's proposed rule. The AREC subcommittee, and subsequently the entire committee, met and studied the language proposed by the member of the SCAC subcommittee that was studying the issue, and the comments and questions generally posed by SCAC. AREC now issues this final report, which contains a modification to our previous drafts of Rule 514. AREC also rejects the amendment proposed by a member of the SCAC subcommittee as being unworkable.

II. **Comment Regarding the Nature of the Problem.** There are 2 separate, but interrelated, matters at issue. The first is whether *ex parte* communications are or should be permissible. As a general rule, we think HIPAA answers that question in the negative. After the AREC meeting in April, we discovered a recently published article (which we have not analyzed in detail), but which seems to agree with the conclusions reached by AREC. The article is titled "An Important Consequence of HIPAA: NO MORE *EX PARTE* COMMUNICATIONS BETWEEN DEFENSE ATTORNEYS AND PLAINTIFFS' TREATING PHYSICIANS." It was written by David G. Wirtes, Jr., R. Edwin Lamberth and Joanna Gomez and it appears at 27 AMERICAN JOURNAL OF TRIAL ADVOCACY 1 (Summer 2003). We urge you to review it in connection with the upcoming SCAC meeting. The second issue is whether there ought to be a procedural vehicle that allows for *ex parte* communications and which is HIPAA friendly. We have concluded for a variety of reasons that such a vehicle ought to be available.

In addition, we note that the problems posed by *ex parte* contacts arise in connection with the discovery of evidence and not its admission before the court. HIPAA does not present an obstacle to the admission of evidence. To the contrary, an

exception to HIPAA allows for the disclosure of health care information when ordered by a trial judge. And, before a trial judge will admit evidence, the evidence first has to be relevant to some issue over which the court has jurisdiction. Besides regulating the admission of evidence, the evidentiary privileges also control the scope of discovery. And, that is where the controversy arises. So, we see the problem as being how to regulate the disclosure of health care information when a trial judge is not present to rule on relevance, discoverability and other similar matters at the time the evidence is being discovered. We believe that new Rule 514 is the best method for balancing the right to privacy afforded by Rule 509, and now HIPAA, with the need to obtain information in the most expeditious fashion.

III. Analysis of AREC's Proposed Rule and the Amendment to Rule 509 Proposed by a Member of SCAC . AREC's proposal is perhaps most usefully viewed as an analog to the rule that prohibits a lawyer who represents a client in a matter from communicating with someone represented by another lawyer in that matter. Texas Disciplinary Rule of Professional Conduct 4.02 forbids a lawyer, in representing a client, from communicating about the subject of his representation with "a person, organization or entity of government" that the lawyer knows is represented by counsel regarding that matter without first obtaining counsel's consent. ABA Model Rule of Professional Conduct 4.2 similarly restricts such *ex parte* communications.[1] A primary justification for this rule is the desire to preserve attorney-client confidences. Kurlantzik, The Prohibition on Communication With an Adverse Party, 51 Conn. B.J. 136, 145-46 (1977) ("The central interest is to protect the privilege—to avoid situations in which persons are asked to reveal privileged information."); Lidge, Government Civil Investigations and the Ethical Ban on Communicating With Represented Parties, 67 Indiana L.J. 549, 561-62 (1992); Restatement of the Law (Third), The Law Governing Lawyers § 99 comment b; *Vickery v. Commission for Lawyer Discipline*, 5 S.W.3d 241, 259 (Tex.App.—Houston [14 Dist.] 1999, pet denied) ("The purpose of Rule 4.02(a) is 'to preserve the integrity of the client-lawyer relationship by protecting the represented party from the superior knowledge and skill of the opposing lawyer.' ") (quoting *In re News Am. Publ'g, Inc.*, 974 S.W.2d 97, 100 (Tex.App. —San Antonio 1998, no pet.)). Cf. Restatement of the Law (Third), The Law Governing Lawyers § 102 (providing that even when a lawyer is permitted to communicate with a nonclient, the lawyer "may not seek to obtain information that the lawyer reasonably should know the nonclient may not reveal without violating a duty of confidentiality to another imposed by law").

The same purpose animates AREC's recommendation. A litigant's treating physician often possesses a wealth of confidential and privileged information about the litigant. To be sure, by filing a malpractice claim, the litigant/patient sacrifices to some

[1] Unlike the Texas rule, the text of the ABA rule refers only to communications with a person represented by counsel, and not does include a reference to organizations or government entities. But Comment 4 to the ABA rule makes clear that it also applies to organizations.

extent the protections of the patient-physician privilege. Some of the plaintiff's medical information will undoubtedly fall within one of the exceptions to the Rule 509 privilege. But some of his or her medical information may still be protected. Moreover, the litigant/patient is not always the person who brought the case. For example, in a malpractice or negligent credentialing case, the plaintiff may want to uncover the defendant physician's confidential medical information in an effort to prove the defendant physician was a drug abuser. Some of this information may fall within an exception to the privilege; some may not.

The two most-commonly invoked exceptions are found in Rule 509(e)(1), which creates an exception where a proceeding is brought by a patient against a physician, and Rule 509(e)(4), which creates an exception where any party relies upon the patient's physical, mental or emotional condition as part of the party's claim or defense. But neither of these exceptions provides carte blanche access to the patient's medical information. Both create exceptions only for medical information that is relevant to the case, and the Supreme Court has directed courts to apply this relevance standard stringently. Interpreting what is now the Rule 509(e)(4) exception, the Court stated :

> Thus courts reviewing claims of privilege and inspecting records *in camera* should be sure that the request for records and the records disclosed are closely related in time and scope to the claims made, *see Mutter v. Wood,* 744 S.W.2d 600, 601 (Tex.1988), so as to avoid any unnecessary incursion into private affairs. Even when a document includes some information meeting this standard, any information not meeting this standard remains privileged and must be redacted or otherwise protected.

R.K. v. Ramirez, 887 S.W.2d 836, 843 (Tex. 1994). The Court's expressed concern was to "prevent" the privilege from evaporating as a matter of course simply because a lawsuit has been filed."

We believe it is unreasonable to assume, as the proposed amendment to Rule 509 seems to do, that physicians will ordinarily be in a position to know precisely what confidential information is privileged and what is not. The proposed amendment to Rule 509 merely states the obvious—except as provided by applicable law—it does nothing to provide guidance to lawyers and physicians. Both state law, see Tex. Occ. Code § 159.001 et seq., and the HIPAA regulations enjoin physicians from breaching confidentiality except in enumerated circumstances.[2] Our proposed rule thus seeks to ensure that lawyers will be prevented from knowingly or unknowingly placing physicians in a position where they may breach their legal duty of maintaining confidentiality. But

[2] The uncertainty for doctors is exacerbated by the fact that Texas Rule of Evidence 509 and Texas Occupation Code § 159.003 contain different, and conflicting, sets of exceptions. See 1 Texas Practice, Goode, Wellborn and Sharlot, Guide to the Texas Rules of Evidence § 509.2 (3d ed. 2002) (arguing that Rule 509 should take precedence over Occupation Code provisions).

AREC's proposal would operate in a less draconian fashion than Disciplinary Rule 4.02. That rule's prohibition on *ex parte* communications may be overcome only by receiving consent from the nonclient's lawyer. Absent consent, the lawyer must resort to formal discovery mechanisms to extract information from the nonclient. AREC's proposed rule does not require consent from counsel; the patient's consent suffices. If that is not forthcoming, the proposed rule still allows the lawyer to communicate informally with the physician once the trial judge has delineated what information the physician may disclose to the lawyer and informed the physician that he or she may decline to be interviewed.

The participants in this process who are most at risk are the physicians and other health care providers. When a physician is being *ex parted* by an attorney other than the physician's attorney, it is the physician who, in the absence of legal training and an understanding of the issues in the case, is called upon to make an informed judgment about what and what not to disclose. We believe that approach, which is what is advocated by a member of SCAC subcommittee studying the issue, places the physician at risk of civil and criminal penalties, without justification.

AREC received a copy of an article which was published in the Pharmaceutical and Medical Device Law Bulletin which argues that HIPAA does not preempt the practice of *ex parte* interviews with a personal injury plaintiff's health care providers. Matteo and Uitti, *Conducting Ex Parte Interviews with Plaintiff's Health Care Providers*, 3 **Pharm. & Med. Device L. Bull.** 1 (No. 9 Sept., 2003). This article is deeply flawed.

First, the article asserts—erroneously—that the HIPAA regulations "removed without replacement," id. at 2, the definitions of "covered entity" and "protected health information" that had appeared in earlier drafts of the regulations at 45 C.F.R. § 164.501. That is not true. The HIPAA regulations occupy Subchapter C (Administrative Data Standards and Related Requirements) of Subtitle A (Department of Health and Human Services) of Title 45 of the Code of Federal Regulations. The terms "covered entity" and "protected health information" are both defined for the *subchapter* (i.e., for the entirety of the regulations) at 45 C.F.R. § 160.103. These definitions conform to the definitions of these terms found in the prior regulations and that Matteor and Uitti claim were dropped from the final regulations.

More fundamentally, Matteo and Uitti write that "Congress recognizes that HIPAA's scope should not reach state discovery practices used to obtain patient health information and employed in a matter in which a personal injury plaintiff has waived the patient-physician privilege by putting his or her medical condition in issue." The authors then quote part of the comment to 45 C.F.R. § 164.512(e), which governs disclosure in judicial and administrative proceedings:

> The provisions in this paragraph are not intended to disrupt current practice whereby an individual who is a party to a proceeding and has put his or her

medical condition at issue will not prevail without consenting to the production of his or her protected health information. In such cases, we presume that parties will have ample notice and an opportunity to object in the context of the proceeding in which the individual is a party."

Id. at 8, quoting 65 Fed. Reg. 82462, 82530 (Dec. 28, 2000).

This language is taken out of context and ignores the changes made in the rule during the drafting process. The Proposed Rule covered disclosures for judicial and administrative proceedings at proposed 45 C.F.R. § 164.510(d). This section would have permitted covered entities to disclose protected health care information without the individual's authorization either:

(1) "In response to an order of a court or administrative tribunal;" or
(2) "Where the individual is a party to the proceeding and his or her medical condition or history is at issue and the disclosure is pursuant to lawful process or otherwise authorized by law."

64 Fed. Reg. 59918, 60057 (Nov. 3, 1999).

The comments to this proposed rule explained that, in judicial or administrative proceedings, covered entities could disclose protected health care information without the individual's consent only "through or pursuant to a court order or an order by an administrative law judge specifically authorizing the disclosure of protected health information." The lone exception to this was "where the protected health information being requested relates to a party to the proceeding whose health condition is at issue, and where the disclosure is made pursuant to lawful process (e.g., a discovery order) or is otherwise authorized by law."[3] Id. at 59959. In other words, even when a party to litigation puts his or her medical condition or history at issue, the proposed regulations permitted covered entities to disclose protected health care information only pursuant to court order, lawful process such as a discovery request, or other means "authorized by law."

The regulations as adopted, however, are quite different. 45 C.F.R. § 164.512(e) governs disclosures for judicial and administrative proceedings. It permits non-authorized disclosure for judicial and administrative proceedings:

(1) "In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order;" or

[3] Disclosure would also be permitted where allowed under other provisions of the regulations. 64 Fed. Reg. at 59959.

(2) "In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal" if certain assurances are received by the covered entity.

Note the changes from the proposed rule to the final regulations. First, the final regulation restricts the information that the covered entity may disclose pursuant to a court order. "[O]nly the protected health information expressly authorized by such order" may be disclosed. 45 C.F.R. § 164.512(e)(1)(i).

Second, and more to the point: the final regulations delete the proposed provision that would have permitted disclosure "[w]here the individual is a party to the proceeding and his or her medical condition or history is at issue and the disclosure is pursuant to lawful process or otherwise authorized by law." The final regulations replace this proposed provision with a far more restrictive one. In the absence of an order from a court or administrative tribunal, the final regulations permit disclosure only in response to "a subpoena, discovery request, or other lawful process." 45 C.F.R. § 164.512(e)(1)(ii). Disclosure "otherwise authorized by law" is no longer allowed.

Moreover, disclosure is allowed pursuant to a subpoena, discovery request, or other lawful process only when one of two requirements is met. First, the covered entity must receive satisfactory assurance from the party seeking the information "that reasonable efforts have been made . . . to ensure that the individual who is the subject of the protected health care information that has been requested has been given notice of the request." 45 C.F.R. § 164.512(e)(1)(ii)(A). Alternatively, the covered entity must receive satisfactory assurance from the party seeking the information that it has made "reasonable efforts . . . to secure a qualified protective order." 45 C.F.R. § 164.512(e)(1)(ii)(B).

In summary, a study of the text of the final regulations, even without reference to their history, plainly indicates the intent to preclude covered entities from disclosing protected health care information in the course of *ex parte* communications conducted without the benefit of a court order. The mechanisms authorized for disclosure for judicial or administrative proceedings—court order, subpoena, discovery request or other lawful process—do not include *ex parte* communications conducted without the benefit of a court order. Any doubt that might exist about this is erased by observing what the final regulations deleted (the provision for disclosure "otherwise authorized by law" when a party puts his or her medical condition at issue) and what the final regulations added (limits on the information that can be disclosed pursuant to court order and, in the absence of a court order, the requirement that covered entities must receive certain assurances from the party seeking the information).[4]

[4] The language quoted by Matteo and Uitti now may be placed in context. It simply states that current practice is that parties who put their medical condition in issue cannot prevail unless they consent to the production of protected health information, and that these regulations are not intended to alter this practice.

In addition to the matters mentioned above, we feel it important to make additional observations regarding the revision to Rule 509 proposed by a member of SCAC (and which we understand is being considered as an alternative to AREC's proposal) and some of the questions raised by SCAC that have been brought to our attention.

First, in accordance with the analysis above, we disagree with the conclusion that HIPAA won't preempt state law regarding the disclosure of protected health information. We believe that HIPAA expressly preempts any state law which is does not provide at least as much protection as HIPAA. 45 C.F.R.§160.202. A state rule that authorizes physicians to disclose protected health information in response to a lawyer's *ex parte* contacts would be contrary to HIPAA requirements.

Second, the language proposed by the member of SCAC does not directly address whether *ex parte* contact should be permissible under any circumstance. So, additional controversy is likely. At present, it appears that *ex parte* contact is not permissible in Texas federal courts and there is no real consensus yet regarding how state courts will rule on the issue. In our opinion, the better solution is the one that resolves the dispute.

Third, the language proposed by the member of SCAC is too vague to provide attorneys or physicians with any real guidance. The attorneys who have assembled to study this issue have a difficult time agreeing on what HIPAA provides. Pity the physician or the attorney who hasn't studied the problem in detail.

Finally, AREC's proposed rule fits neatly with §74.052 of the Civil Practice & Remedies Code, which requires a plaintiff in a health care liability claim to consent to the disclosure of "verbal" as well as written health care information in order to bring a claim. Proposed Rule 514 envisions that very process.

IV. The Automatic Exclusion Language in the initial draft of Rule 514.

AREC's proposed Rule 514 originally provided that **"Evidence obtained in violation ofthis Rule is inadmissible except upon a finding of good cause."** After receiving comments and feedback concerning this provision, we have decided that a better approach would be to simply allow the trial court to impose the appropriate sanctions if the Rule is violated. There are several reasons for recommending this

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In such situations, the regulations "presume that parties will have ample notice and an opportunity to object," presumably to the scope of the consent, "in the context of the proceeding." In other words, the regulations do not prevent courts from dismissing a party's claims if the party refuses to consent to the disclosure of relevant medical information after the court determines the party has put his or her medical condition in issue. But that is a far cry from saying that the regulations authorize covered entities from disclosing protected health care information during the course of *ex parte* communications simply because a party has put his or her mental health information in issue.

change. First, if evidence obtained in violation of the Rule is admissible in the first instance, it would or should have come out in discovery anyway. On the other hand, if the evidence were inadmissible then the proposed language would be superfluous. Second, cases should be decided based on the evidence and we should not be in the business of creating a procedural trap for the unwary. Third, a trial court can best fashion an appropriate sanction, and make sure the sanction is assessed against the party or attorney who gives offense. This is consistent with other legal precedents regarding assessing sanctions. Several members of AREC thought that the reference to sanctions could be deleted in its entirety because trial courts already have the inherent authority to assess sanctions and because the inclusion of the language might suggest to trial judges that the judge **had** to assess sanctions. However, the majority of AREC felt that the inclusion of the word "**may**" made it clear that the awarding of sanctions was discretionary. In addition, the majority felt that it was important to give trial courts some direction (to Rule 215) to decide how to assess a violation of the rule. We therefore recommend that the sentence referenced above be deleted and replaced with "**Evidence obtained in violation of this Rule may subject the violating party to sanctions as provided in Rule 215.**"

V. Peer Review And Other Activity.

In his letter of March 15, 2004, Buddy Low asked AREC to consider adding another exception to proposed Rule 514 to deal specifically with peer review activity. As we studied the matter, it occurred to us that there are 2 separate issues involved here. The first relates to the initial gathering of information from a health care provider. We noted that an amendment to the rule was probably not necessary for HIPAA purposes because persons engaged in legitimate peer review and health oversight activities are not prohibited from disclosing protected health information without permission. 45 C.F.R. §164.512(d). The second issue is: What can a person (including parties and nonparties who are health care providers) who obtains information pursuant to proposed Rule 514 do with it once he/she/it has it? As we understand the concern expressed by Buddy Low, he wanted to make sure that a peer review committee was able to use the information; that is, disclose the information it obtained to its members, the Board of Medical Examiners, its attorneys, etc. in order to properly perform its peer review function. As we considered the matter, we realized that there are probably a number of other activities that lawyers (joint defense, consulting experts, etc.) and others (nursing, dental and other health care agencies which regulate health care activity) engage in every day that require them to disclose protected health care information to other people. So, rather than addressing only peer review activity, we decided to create an exception that allowed persons to communicate information obtained in connection with new Rule 514 to others so long as the disclosure is also privileged. That way, a physician who is sued can disclose health care information to his lawyer. That way, a lawyer representing a physician can disclose health care information to a consulting expert, and so on. Proposed Rule 514, with the new sanctions and exceptions language (in bold face), would read as follows:

In civil cases, a party or party's representative may not communicate with or obtain health care information from a physician or health care provider outside of formal discovery except by (1) written authorization of the patient or the patient's representative, or (2) pursuant to a court order which specifies the scope and subject matters that may be disclosed and which states that the health care provider is under no obligation to discuss such matters outside of formal discovery. A copy of such order mush be provided to the health care provider prior to any such communication or disclosure. **Evidence obtained in violation of this Rule may subject the violating party to sanctions provided in Rule 215. This rule does not prohibit a party, a physician, or a health care provider from communicating health care information to another person or party where the communication would be privileged.**

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June 21, 2004

Mr. Jeffrey S. Boyd
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Dear Jeff:

I agree with your conclusion that HIPPA does not preempt the provisions of Rules 509 and 510. However, once that information is waived by the filing of the lawsuit, then one must look to HIPPA as to the protection the patient gets when his health care information is revealed.

First, I point out that Rule 509 pertains only to the physician-patient privilege. Rule 510 pertains to "confidential health information" between a patient and a "professional". Professional is defined in Evidence Rule 510. HIPPA does not define "health care information" (as that term is used in the AREC State Bar version 514). HIPPA does define "health care" as follows: Health care means care, services or supplies related to the health of an individual. Health care includes, but is not limited to the following: (1) Preventive, diagnosis, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and, (2) Sale or dispensing of a drug, device, equipment or other item in accordance with a prescription.

HIPPA was designed as a standard for privacy of individually identifiable health information. "Health information" (as defined by HIPPA) means any information, whether oral or recorded in any form or medium at: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearing house; and, (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of heath care to an individual; or the past, present, or future payment for the provision of health care to an individual.

The point I am making from the above is that HIPPA is much broader than Rules 509 and 510, which deal only with two limited privileges. HIPPA pertains to all medical information. HIPPA does

not deal with waiver or with the effect of filing a lawsuit. Therefore, there is nothing inconsistent in HIPPA with such waiver when one files a lawsuit. The thing that would be inconsistent with HIPPA is if that health information can be given ex parte without notice to the patient. Rules 509 and 510 do not specifically address how the information when waived should be made available. There is nothing in that rule that says ex parte is allowed or is disallowed. Thus, the express provisions of Rules 509 and 510 are not inconsistent with HIPPA until it comes to the question of how that information when waived is obtained. HIPPA is specific on that. Section 164.508 of HIPPA pertains to use and disclosure for which an authorization is required. When an authorization is given, Rules 509 and 510 are not invoked. Section 164.510 of HIPPA pertains to disclosure requiring an opportunity for the individual to agree or to object. This certainly requires notice and would not allow ex parte. This would be by subpoena, court order, or routine discovery. Section 164.512 pertains to disclosure for which an authorization or opportunity to agree or object is not required. This section is rather lengthy but affidavits must be given showing that notice can't be given to the patient and that efforts have been made to give notice, further requiring steps to protect the health care information. Certainly there is not included in this an ex parte communication with the doctor.

Based on the above I agree with you that HIPPA does not preempt Rules 509 and 510 but that HIPPA does preempt any state court ruling that says that ex parte communications can be had with the patient's doctor.

Jeff, thank you very much for your help in this matter.

Sincerely,

Buddy Low

BL:cc

Connie Collis

From: John.Martin@tklaw.com
Sent: Thursday, June 03, 2004 9:29 AM
To: cac@obt.com
Cc: Stephen.Tipps@bakerbotts.com
Subject: SCAC—Ex Parte Communications

Buddy:

I have reviewed the material pertaining to the ex parte communications with physicians issues that you forwarded with your letters of May 20 and June 1, 2004. I am not a member of the Evidence Subcommittee, so I suppose technically I do not have a vote, but I would like to give you my comments about the new Rule 514 recommended by the State Bar Committee. While I think this proposed rule is far superior to the previous proposal from the AREC, I still see some major problems with it.

1. There is no definition of "health care information." If the committee's intent is to cover what HIPAA defines as protected health information ("PHI"), the rule should say so. I have not had time to analyze fully what the ramifications of using that definition in a state rule of evidence would be, but at the outset of discussing this rule, I think we need to know what is intended to be covered by the term "health care information" in the proposed rule.

2. My recollections is that everyone at the meeting of the Evidence Subcommittee at Stephen Tipps' office seemed to agree that some facts known by a treating physician simply are not privileged. One example I have used is the question of whether a surgeon may have left the operating room for a period of time during an operation. If such a claim is involved in a case, it would be perfectly appropriate for the defense lawyer representing the surgeon to ask the nurses and anesthesiologists who were present whether they recall that the surgeon was or was not present in the operating throughout the entirety of the procedure. That is not a privileged communication or protected health information under any definition, but is simply a fact, just like whether the light was red or green. Without a definition of "health care information" I do not know whether that would be covered by this rule or not. Also, any lawyer in a medical malpractice case should be able to ask a subsequent treating physician whether he or she has any criticisms of the health care providers who are parties to the case.

3. The proposed rule allows disclosure of health care information "outside of formal discovery" if there is a written authorization of the patient or the patient's representative. Under the revisions to the medical malpractice law enacted by House Bill 4, notice of a health care claim must be accompanied by a medical authorization in the form specified by Section 74.052 of the Texas Civil Practice & Remedies Code. That form specifically says, "The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written ...." The required form also provides, "I understand that information used or disclosed pursuant to this

authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations." I have heard defense lawyers contend that language means once the defense lawyer has the authorization form that the plaintiff is required to produce before pursuing a claim, the defense lawyer may engage in ex parte communications with the treating physician. I express no opinion on whether that is correct. However, the proposed Rule 514 leaves that issue up in the air.

4. The way the rule is written, the last sentence allowing communication among parties, physicians and health care providers of privileged information seems to directly contradict the first sentence of the rule. The intent is clear, but I think better draftmanship would dictate that the rule be reworded so that the last sentence is preceded by "except" or "unless," and it should be placed either before or after the first sentence. I am not going to attempt to redraft it now, but I think that would have to be done if the Evidence Subcommittee of the SCAC decides to recommend anything similar to this rule.

As I have repeatedly emphasized, I am not an expert on HIPAA, and have not studied the regulations or the statute in great detail. On the other hand, Barbara Radnofsky of Vinson & Elkins has written and lectured extensively about the impact of HIPAA on discovery practices. I imagine you know Barbara and would agree that she is an exceptionally bright and talented lawyer. I would suggest that you submit the report of the AREC to her and ask for her comments. Of course they would not be binding, and she does not have a vote in the subcommittee, but I think her input would be valuable, and I am sure she would be happy to provide it. Please let me know if you agree.

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June 3, 2004

Mr. John H. Martin
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Dear John:

Thank you very much for your email. You have certainly raised some good points. The first point brings me back to our initial assignment, which was merely to consider ex parte communications with a doctor. Evidence Rule 509 pertains only to the physician-patient privilege. However, Evidence Rule 510 pertains to "confidential health information" between a patient and a "professional." Professional is defined in Evidence Rule 510. HIPPA does not define "health care information" (as that term is used in AREC State Bar version 514). HIPPA does define "health care" as follows: Health care means care, services or supplies related to the health of an individual. Health care includes, but is not limited to the following: (1) Preventive, diagnosis, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and, (2) Sale or dispensing of a drug, devise, equipment or other item in accordance with a prescription.

HIPPA also defines "protected health information" as meaning "individually identifiable health information", and then goes on to give exceptions. I think there is a good understanding of the term "health care information" and do not believe we need to attempt to define it.

I will point out that the AREC proposed Rule 514 does relate to and affect Evidence Rule 509 and Evidence Rule 510. Evidence Rule 509, as pointed out above, pertains only to the physician-patient privilege and 510 pertains to "professional and patient." The AREC version pertains to <u>all health care providers</u>. I am confident that HIPPA pertains to all health care providers. Yet, I am not totally convinced that we should try to follow HIPPA in everything it does. In other words, our present Rules of Evidence pertain only to doctors and professionals, and I think we should address only doctors and professionals. If a patient feels that his record should not be revealed by other health care providers that can be taken up and argued under HIPPA. Otherwise, we would have to

amend Evidence Rules 509 and 510, because the privilege, as well as the lawsuit exception as written in the rules, only pertains to doctor-patient and professional and patient. The privilege, as well as the waiver, does not extend to other health care providers.

Statutes in this regard are not entirely consistent. Occupation Code Section 159 pertains only to physician and patient. Health and Safety Code Section 611.001 pertains to patient and professional. When Section 611.004 was first passed in 1974, it had a Section 9 which said information could be given in civil or criminal cases as authorized by law or rule. Thus, there was the lawsuit exception. The 1995 amendment left this out. Thus, the Health and Safety Code Section 611.004 does not have the lawsuit exception that is provided in Rules 509 and 510 and in the Occupation Code. Occupation Code Section 159.005 speaks of consent and says that it must have three elements (the same as those required in present Rule 509).

We get no help from the Federal Rules of Evidence because there is no privilege provision. Each federal courts follow the privileges of the state in which it sits.

In brief, I would strongly consider substituting the word "professional" for the words "health care provider" as used in AREC State Bar version 514.

John, I don't necessarily agree that whether a doctor was in the operating room or was not in the operating room is not "health care information." It certainly is information as to whether the doctor was doing anything or whether health care was being provided by the doctor and those present are there only for purposes of providing health care to the patient.

With regard to whether a lawyer in a medical malpractice case should be able to ask the subsequent treating physician whether he or she is critical of the health care providers who are parties in the case, that would come under the exception of where a malpractice case is filed as long as it does not involve giving information as to health care given by the subsequent treating doctor. I don't think that would be prohibited. However, it could be argued that the opinion of the doctor is based upon subsequent examination and information about the patient's health that he obtained from the patient and in that event I feel it would be covered. I don't think we should get into that.

With regard to the authorization required by Section 74.052 of the Texas Civil Practice & Remedies Code, this is specifically for a medical malpractice claim. I don't believe we should be that specific, and I don't think HIPPA requires us to be that specific in the authorization. I don't feel we should try to interpret whether the authorization provided in CPRC Section 74.052 authorizes ex parte conversations or not.

Your suggestion no. 4 is well taken, and I would propose that the word "however", followed by a comma, be used before the last sentence.

Your suggestion to call Barbara Radnofsky is well taken. I attempted to call her today and she is out for almost a week. She along with many others have written various articles about HIPPA. Some of the articles are confusing because people have not distinguished between earlier versions of HIPPA and the final version and some writers have misstated what HIPPA says by failing to distinguish this. I have spent considerable time reading the entire HIPPA more than once, and I find no exception stating that a lawsuit or claim is a waiver. It is clear that we can do whatever we want as long as we are as restrictive as HIPPA or more restrictive than HIPPA. Section 160.202 of HIPPA provides as follows: "Contrary, when used to compare a provision of state law to a standard, requirement or implementation specification adopted under this chapter means: (1) A covered entity would find it impossible to comply with both the state and federal requirements or (2) The provision of state law stands as an obstacle to the accomplishment and exception of full purposes and objectives of Part C of Title XI of the Act...." Section 160.203 provides that HIPPA preempts any provision of state law except if one of several conditions is met. One of those conditions is: "The provision of state law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement or implementation specification adopted under Sub-part E of Part 164 of this chapter."

If the State Bar version is adopted, I would also strongly consider a footnote with regard to the last sentence referring to professional review activities as provided in 42 USCA 11101, et seq. and Section 160.001 of the Occupation Code referring to the Federal Health Care Quality Improvement Act (medical peer review).

John, I do consider you a member of the Evidence Committee because I asked you to sit on the committee and I certainly will consider your vote. I assume that you still prefer your version, but if I am in error, please let me know.

Thanks for all the work and thought you have put in this. I appreciate very much your help.

Sincerely,

Buddy

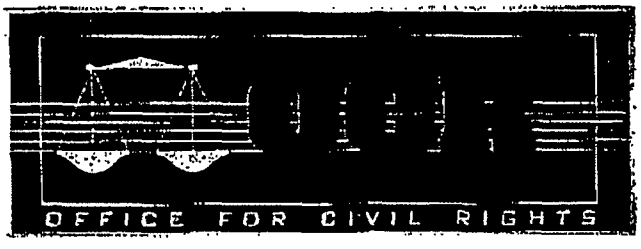
Buddy Low

BL:cc

United States Department of Health Human Services

OCR PRIVACY BRIEF

SUMMARY OF THE HIPAA PRIVACY RULE



HIPAA Compliance Assistance

SUMMARY OF
THE HIPAA PRIVACY RULE

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SUMMARY OF
THE HIPAA PRIVACY RULE

Introduction	The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").[1] The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights ("OCR") has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties. A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed. This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in notes at the end of this document. To view the entire Rule, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa. In the event of a conflict between this summary and the Rule, the Rule governs. Links to the OCR Guidance Document are provided throughout this paper. Provisions of the Rule referenced in this summary are cited in endnotes at the end of this document. To review the entire Rule itself, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa.
Statutory & Regulatory Background	The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions. HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within

	three years of the passage of HIPAA. Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999. The Department received over 52,000 public comments. The final regulation, the Privacy Rule, was published December 28, 2000.[2] In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule. The Department received over 11,000 comments. The final modifications were published in final form on August 14, 2002.[3] A text combining the final regulation and the modifications can be found at 45 CFR Part 160, and Part 164, Subparts A and E on the OCR website: http://www.hhs.gov/ocr/hipaa.
Who is Covered by the Privacy Rule	The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the "covered entities"). For help in determining whether you are covered, use the decision tool at: http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp. **Health Plans.** Individual and group plans that provide or pay the cost of medical care are covered entities.[4] Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations ("HMOs"), Medicare, Medicaid, Medicare+Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies). Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans. There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity. Two types of government-funded programs are not health plans: (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program; and (2) those programs whose principal activity is directly providing health care, such as a community health center,[5] or the making of grants to fund the direct provision of health care. Certain types of insurance entities are also not health plans, including entities providing only workers' compensation, automobile insurance, and property and casualty insurance. **Health Care Providers.** Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule.[6] Using electronic technology, such as email, does not mean a health care provider is a covered entity; the transmission must be in connection with a standard transaction. The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf. Health care providers include all "providers of services" (e.g., institutional providers such as hospitals) and "providers of medical or health services" (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

	Health Care Clearinghouses. *Health care clearinghouses* are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.[7] In most instances, health care clearinghouses will receive individually identifiable health information only when they are providing these processing services to a health plan or health care provider as a business associate. In such instances, only certain provisions of the Privacy Rule are applicable to the health care clearinghouse's uses and disclosures of protected health information.[8] Health care clearinghouses include billing services, repricing companies, community health management information systems, and value-added networks and switches if these entities perform clearinghouse functions.
Business Associates	**Business Associate Defined.** In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.[9] Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. However, persons or organizations are not considered business associates if their functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all. A covered entity can be the business associate of another covered entity. **Business Associate Contract.** When a covered entity uses a contractor or other non-workforce member to perform *"business associate"* services or activities, the Rule requires that the covered entity include certain protections for the information in a business associate agreement (in certain circumstances governmental entities may use alternative means to achieve the same protections). In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates.[10] Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Rule. Covered entities that have an existing written contract or agreement with business associates prior to October 15, 2002, which is not renewed or modified prior to April 14, 2003, are permitted to continue to operate under that contract until they renew the contract or April 14, 2004, whichever is first.[11] Sample business associate contract language is available on the OCR website at: http://www.hhs.gov/ocr/hipaa/contractprov.html. Also see OCR "Business Associate" Guidance.
What Information is Protected	**Protected Health Information.** The Privacy Rule protects all *"individually identifiable health information"* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information *"protected health information (PHI)."*[12]

	"Individually identifiable health information" is information, including demographic data, that relates to: • the individual's past, present or future physical or mental health or condition, • the provision of health care to the individual, or • the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.[13] Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number). The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. **De-Identified Health Information.** There are no restrictions on the use or disclosure of de-identified health information.[14] De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.[15]
General Principle for Uses and Disclosures	**Basic Principle.** A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.[16] **Required Disclosures.** A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.[17] See OCR "Government Access" Guidance.
Permitted Uses and Disclosures	**Permitted Uses and Disclosures.** A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and

(6) Limited Data Set for the purposes of research, public health or health care operations.[18] Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

(1) To the Individual. A covered entity may disclose protected health information to the individual who is the subject of the information.

(2) Treatment, Payment, Health Care Operations. A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.[19] A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See OCR "Treatment, Payment, Health Care Operations" Guidance.

> ***Treatment*** is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.[20]
>
> ***Payment*** encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual[21] and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
>
> ***Health care operations*** are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.[22]

Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.[23]

Obtaining "consent" (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.[24] The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

(3) Uses and Disclosures with Opportunity to Agree or Object. Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

> ***Facility Directories.*** It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual's informal permission to list in its facility directory the individual's name, general condition, religious affiliation, and location in the provider's facility.[25] The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.
>
> ***For Notification and Other Purposes.*** A covered entity also may rely on an individual's informal permission to disclose to the individual's family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person's involvement in the individual's care or payment for care.[26] This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

(4) Incidental Use and Disclosure. The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.[27] See OCR "Incidental Uses and Disclosures" Guidance.

(5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.[28] These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

> ***Required by Law.*** Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by

	statute, regulation, or court orders).[29] ***Public Health Activities.*** Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OHSA), the Mine Safety and Health Administration (MHSA), or similar state law.[30] See OCR "Public Health" Guidance; CDC Public Health and HIPAA Guidance. ***Victims of Abuse, Neglect or Domestic Violence.*** In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.[31] ***Health Oversight Activities.*** Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.[32] ***Judicial and Administrative Proceedings.*** Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.[33] ***Law Enforcement Purposes.*** Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.[34]

Decedents. Covered entities may disclose protected health information to funeral directors as needed, and to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.[35]

Cadaveric Organ, Eye, or Tissue Donation. Covered entities may use or disclose protected health information to facilitate the donation and transplantation of cadaveric organs, eyes, and tissue.[36]

Research. "Research" is any systematic investigation designed to develop or contribute to generalizable knowledge.[37] The Privacy Rule permits a covered entity to use and disclose protected health information for research purposes, without an individual's authorization, provided the covered entity obtains either: (1) documentation that an alteration or waiver of individuals' authorization for the use or disclosure of protected health information about them for research purposes has been approved by an Institutional Review Board or Privacy Board; (2) representations from the researcher that the use or disclosure of the protected health information is solely to prepare a research protocol or for similar purpose preparatory to research, that the researcher will not remove any protected health information from the covered entity, and that protected health information for which access is sought is necessary for the research; or (3) representations from the researcher that the use or disclosure sought is solely for research on the protected health information of decedents, that the protected health information sought is necessary for the research, and, at the request of the covered entity, documentation of the death of the individuals about whom information is sought.[38] A covered entity also may use or disclose, without an individuals' authorization, a limited data set of protected health information for research purposes (see discussion below).[39] See OCR "Research" Guidance; NIH Protecting PHI in Research.

Serious Threat to Health or Safety. Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat). Covered entities may also disclose to law enforcement if the information is needed to identify or apprehend an escapee or violent criminal.[40]

Essential Government Functions. An authorization is not required to use or disclose protected health information for certain essential government functions. Such functions include: assuring proper execution of a military mission, conducting intelligence and national security activities that are authorized by law, providing protective services to the President, making medical suitability determinations for U.S. State Department employees, protecting the health and safety of inmates or employees in a correctional institution, and determining eligibility for or conducting enrollment in certain government benefit programs.[41]

	Workers' Compensation. Covered entities may disclose protected health information as authorized by, and to comply with, workers' compensation laws and other similar programs providing benefits for work-related injuries or illnesses.[42] See OCR "Workers' Compensation" Guidance. **(6) Limited Data Set.** A limited data set is protected health information from which certain specified direct identifiers of individuals and their relatives, household members, and employers have been removed.[43] A limited data set may be used and disclosed for research, health care operations, and public health purposes, provided the recipient enters into a data use agreement promising specified safeguards for the protected health information within the limited data set.
Authorized Uses and Disclosures	**Authorization.** A covered entity must obtain the individual's written authorization for any use or disclosure of protected health information that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule.[44] A covered entity may not condition treatment, payment, enrollment, or benefits eligibility on an individual granting an authorization, except in limited circumstances.[45] An authorization must be written in specific terms. It may allow use and disclosure of protected health information by the covered entity seeking the authorization, or by a third party. Examples of disclosures that would require an individual's authorization include disclosures to a life insurer for coverage purposes, disclosures to an employer of the results of a pre-employment physical or lab test, or disclosures to a pharmaceutical firm for their own marketing purposes. All authorizations must be in plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, right to revoke in writing, and other data. The Privacy Rule contains transition provisions applicable to authorizations and other express legal permissions obtained prior to April 14, 2003.[46] **Psychotherapy Notes[47].** A covered entity must obtain an individual's authorization to use or disclose psychotherapy notes with the following exceptions[48]: • The covered entity who originated the notes may use them for treatment. • A covered entity may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine the covered entity's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner or as required by law. **Marketing.** Marketing is any communication about a product or service that encourages recipients to purchase or use the product or service.[49] The Privacy Rule carves out the following health-related activities from this definition of marketing: • Communications to describe health-related products or services, or payment

	for them, provided by or included in a benefit plan of the covered entity making the communication; • Communications about participating providers in a provider or health plan network, replacement of or enhancements to a health plan, and health-related products or services available only to a health plan's enrollees that add value to, but are not part of, the benefits plan; • Communications for treatment of the individual; and • Communications for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or care settings to the individual. Marketing also is an arrangement between a covered entity and any other entity whereby the covered entity discloses protected health information, in exchange for direct or indirect remuneration, for the other entity to communicate about its own products or services encouraging the use or purchase of those products or services. A covered entity must obtain an authorization to use or disclose protected health information for marketing, except for face-to-face marketing communications between a covered entity and an individual, and for a covered entity's provision of promotional gifts of nominal value. No authorization is needed, however, to make a communication that falls within one of the exceptions to the marketing definition. An authorization for marketing that involves the covered entity's receipt of direct or indirect remuneration from a third party must reveal that fact. See OCR "Marketing" Guidance.
Limiting Uses and Disclosures to the Minimum Necessary	**Minimum Necessary.** A central aspect of the Privacy Rule is the principle of "minimum necessary" use and disclosure. A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.[50] A covered entity must develop and implement policies and procedures to reasonably limit uses and disclosures to the minimum necessary. When the minimum necessary standard applies to a use or disclosure, a covered entity may not use, disclose, or request the entire medical record for a particular purpose, unless it can specifically justify the whole record as the amount reasonably needed for the purpose. See OCR "Minimum Necessary" Guidance. The minimum necessary requirement is not imposed in any of the following circumstances: (a) disclosure to or a request by a health care provider for treatment; (b) disclosure to an individual who is the subject of the information, or the individual's personal representative; (c) use or disclosure made pursuant to an authorization; (d) disclosure to HHS for complaint investigation, compliance review or enforcement; (e) use or disclosure that is required by law; or (f) use or disclosure required for compliance with the HIPAA Transactions Rule or other HIPAA Administrative Simplification Rules. **Access and Uses.** For internal uses, a covered entity must develop and implement policies and procedures that restrict access and uses of protected health information based on the specific roles of the members of their workforce. These policies and procedures must identify the persons, or classes of persons, in the workforce who need access to protected health information to carry out their duties, the categories of

	protected health information to which access is needed, and any conditions under which they need the information to do their jobs. **Disclosures and Requests for Disclosures.** Covered entities must establish and implement policies and procedures (which may be standard protocols) for *routine, recurring disclosures, or requests for disclosures,* that limits the protected health information disclosed to that which is the minimum amount reasonably necessary to achieve the purpose of the disclosure. Individual review of each disclosure is not required. For non-routine, non-recurring disclosures, or requests for disclosures that it makes, covered entities must develop criteria designed to limit disclosures to the information reasonably necessary to accomplish the purpose of the disclosure and review each of these requests individually in accordance with the established criteria. **Reasonable Reliance.** If another covered entity makes a request for protected health information, a covered entity may rely, if reasonable under the circumstances, on the request as complying with this minimum necessary standard. Similarly, a covered entity may rely upon requests as being the minimum necessary protected health information from: (a) a public official, (b) a professional (such as an attorney or accountant) who is the covered entity's business associate, seeking the information to provide services to or for the covered entity; or (c) a researcher who provides the documentation or representation required by the Privacy Rule for research.
Notice and Other Individual Rights	**Privacy Practices Notice.** Each covered entity, with certain exceptions, must provide a notice of its privacy practices.[51] The Privacy Rule requires that the notice contain certain elements. The notice must describe the ways in which the covered entity may use and disclose protected health information. The notice must state the covered entity's duties to protect privacy, provide a notice of privacy practices, and abide by the terms of the current notice. The notice must describe individuals' rights, including the right to complain to HHS and to the covered entity if they believe their privacy rights have been violated. The notice must include a point of contact for further information and for making complaints to the covered entity. Covered entities must act in accordance with their notices. The Rule also contains specific distribution requirements for direct treatment providers, all other health care providers, and health plans. See OCR "Notice" Guidance. • **Notice Distribution.** A covered health care provider with a *direct treatment relationship* with individuals must deliver a privacy practices notice to patients starting April 14, 2003 as follows: o Not later than the first service encounter by personal delivery (for patient visits), by automatic and contemporaneous electronic response (for electronic service delivery), and by prompt mailing (for telephonic service delivery); o By posting the notice at each service delivery site in a clear and prominent place where people seeking service may reasonably be expected to be able to read the notice; and o In emergency treatment situations, the provider must furnish its notice as soon as practicable after the emergency abates.

Covered entities, whether *direct treatment providers* or *indirect treatment providers* (such as laboratories) or *health plans* must supply notice to anyone on request.[52] A covered entity must also make its notice electronically available on any web site it maintains for customer service or benefits information.

The covered entities in an *organized health care arrangement* may use a joint privacy practices notice, as long as each agrees to abide by the notice content with respect to the protected health information created or received in connection with participation in the arrangement.[53] Distribution of a joint notice by any covered entity participating in the organized health care arrangement at the first point that an OHCA member has an obligation to provide notice satisfies the distribution obligation of the other participants in the organized health care arrangement.

A health plan must distribute its privacy practices notice to each of its enrollees by its Privacy Rule compliance date. Thereafter, the health plan must give its notice to each new enrollee at enrollment, and send a reminder to every enrollee at least once every three years that the notice is available upon request. A health plan satisfies its distribution obligation by furnishing the notice to the "named insured," that is, the subscriber for coverage that also applies to spouses and dependents.

- **Acknowledgement of Notice Receipt.** A covered health care provider with a direct treatment relationship with individuals must make a good faith effort to obtain written acknowledgement from patients of receipt of the privacy practices notice.[54] The Privacy Rule does not prescribe any particular content for the acknowledgement. The provider must document the reason for any failure to obtain the patient's written acknowledgement. The provider is relieved of the need to request acknowledgement in an emergency treatment situation.

Access. Except in certain circumstances, individuals have the right to review and obtain a copy of their protected health information in a covered entity's *designated record set*.[55] The "designated record set" is that group of records maintained by or for a covered entity that is used, in whole or part, to make decisions about individuals, or that is a provider's medical and billing records about individuals or a health plan's enrollment, payment, claims adjudication, and case or medical management record systems.[56] The Rule excepts from the right of access the following protected health information: psychotherapy notes, information compiled for legal proceedings, laboratory results to which the Clinical Laboratory Improvement Act (CLIA) prohibits access, or information held by certain research laboratories. For information included within the right of access, covered entities may deny an individual access in certain specified situations, such as when a health care professional believes access could cause harm to the individual or another. In such situations, the individual must be given the right to have such denials reviewed by a licensed health care professional for a second opinion.[57] Covered entities may impose reasonable, cost-based fees for the cost of copying and postage.

Amendment. The Rule gives individuals the right to have covered entities amend their protected health information in a designated record set when that information is

	inaccurate or incomplete.[58] If a covered entity accepts an amendment request, it must make reasonable efforts to provide the amendment to persons that the individual has identified as needing it, and to persons that the covered entity knows might rely on the information to the individual's detriment.[59] If the request is denied, covered entities must provide the individual with a written denial and allow the individual to submit a statement of disagreement for inclusion in the record. The Rule specifies processes for requesting and responding to a request for amendment. A covered entity must amend protected health information in its designated record set upon receipt of notice to amend from another covered entity. **Disclosure Accounting.** Individuals have a right to an accounting of the disclosures of their protected health information by a covered entity or the covered entity's business associates.[60] The maximum disclosure accounting period is the six years immediately preceding the accounting request, except a covered entity is not obligated to account for any disclosure made before its Privacy Rule compliance date. The Privacy Rule does not require accounting for disclosures: (a) for treatment, payment, or health care operations; (b) to the individual or the individual's personal representative; (c) for notification of or to persons involved in an individual's health care or payment for health care, for disaster relief, or for facility directories; (d) pursuant to an authorization; (e) of a limited data set; (f) for national security or intelligence purposes; (g) to correctional institutions or law enforcement officials for certain purposes regarding inmates or individuals in lawful custody; or (h) incident to otherwise permitted or required uses or disclosures. Accounting for disclosures to health oversight agencies and law enforcement officials must be temporarily suspended on their written representation that an accounting would likely impede their activities. **Restriction Request.** Individuals have the right to request that a covered entity restrict use or disclosure of protected health information for treatment, payment or health care operations, disclosure to persons involved in the individual's health care or payment for health care, or disclosure to notify family members or others about the individual's general condition, location, or death.[61] A covered entity is under no obligation to agree to requests for restrictions. A covered entity that does agree must comply with the agreed restrictions, except for purposes of treating the individual in a medical emergency.[62] **Confidential Communications Requirements.** Health plans and covered health care providers must permit individuals to request an alternative means or location for receiving communications of protected health information by means other than those that the covered entity typically employs.[63] For example, an individual may request that the provider communicate with the individual through a designated address or phone number. Similarly, an individual may request that the provider send communications in a closed envelope rather than a post card. Health plans must accommodate reasonable requests if the individual indicates that the disclosure of all or part of the protected health information could endanger the individual. The health plan may not question the individual's statement of endangerment. Any covered entity may condition compliance with a confidential communication request on the individual specifying an alternative address or method of contact and explaining how any payment will be handled.

Administrative Requirements	HHS recognizes that covered entities range from the smallest provider to the largest, multi-state health plan. Therefore the flexibility and scalability of the Rule are intended to allow covered entities to analyze their own needs and implement solutions appropriate for their own environment. What is appropriate for a particular covered entity will depend on the nature of the covered entity's business, as well as the covered entity's size and resources. **Privacy Policies and Procedures.** A covered entity must develop and implement written privacy policies and procedures that are consistent with the Privacy Rule.[64] **Privacy Personnel.** A covered entity must designate a privacy official responsible for developing and implementing its privacy policies and procedures, and a contact person or contact office responsible for receiving complaints and providing individuals with information on the covered entity's privacy practices.[65] **Workforce Training and Management.** Workforce members include employees, volunteers, trainees, and may also include other persons whose conduct is under the direct control of the entity (whether or not they are paid by the entity).[66] A covered entity must train all workforce members on its privacy policies and procedures, as necessary and appropriate for them to carry out their functions.[67] A covered entity must have and apply appropriate sanctions against workforce members who violate its privacy policies and procedures or the Privacy Rule.[68] **Mitigation.** A covered entity must mitigate, to the extent practicable, any harmful effect it learns was caused by use or disclosure of protected health information by its workforce or its business associates in violation of its privacy policies and procedures or the Privacy Rule.[69] **Data Safeguards.** A covered entity must maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent intentional or unintentional use or disclosure of protected health information in violation of the Privacy Rule and to limit its incidental use and disclosure pursuant to otherwise permitted or required use or disclosure.[70] For example, such safeguards might include shredding documents containing protected health information before discarding them, securing medical records with lock and key or pass code, and limiting access to keys or pass codes. See OCR "Incidental Uses and Disclosures" Guidance. **Complaints.** A covered entity must have procedures for individuals to complain about its compliance with its privacy policies and procedures and the Privacy Rule.[71] The covered entity must explain those procedures in its privacy practices notice.[72] Among other things, the covered entity must identify to whom individuals can submit complaints to at the covered entity and advise that complaints also can be submitted to the Secretary of HHS. **Retaliation and Waiver.** A covered entity may not retaliate against a person for exercising rights provided by the Privacy Rule, for assisting in an investigation by HHS or another appropriate authority, or for opposing an act or practice that the person believes in good faith violates the Privacy Rule.[73] A covered entity may not

	require an individual to waive any right under the Privacy Rule as a condition for obtaining treatment, payment, and enrollment or benefits eligibility.[74] **Documentation and Record Retention.** A covered entity must maintain, until six years after the later of the date of their creation or last effective date, its privacy policies and procedures, its privacy practices notices, disposition of complaints, and other actions, activities, and designations that the Privacy Rule requires to be documented.[75] **Fully-Insured Group Health Plan Exception.** The only administrative obligations with which a fully-insured group health plan that has no more than enrollment data and summary health information is required to comply are the (1) ban on retaliatory acts and waiver of individual rights, and (2) documentation requirements with respect to plan documents if such documents are amended to provide for the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO that services the group health plan.[76]
Organizational Options	The Rule contains provisions that address a variety of organizational issues that may affect the operation of the privacy protections. **Hybrid Entity.** The Privacy Rule permits a covered entity that is a single legal entity and that conducts both covered and non-covered functions to elect to be a "hybrid entity."[77] (The activities that make a person or organization a covered entity are its "covered functions."[78]) To be a hybrid entity, the covered entity must designate in writing its operations that perform covered functions as one or more "health care components." After making this designation, most of the requirements of the Privacy Rule will apply only to the health care components. A covered entity that does not make this designation is subject in its entirety to the Privacy Rule. **Affiliated Covered Entity.** Legally separate covered entities that are affiliated by common ownership or control may designate themselves (including their health care components) as a single covered entity for Privacy Rule compliance.[79] The designation must be in writing. An affiliated covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions. **Organized Health Care Arrangement.** The Privacy Rule identifies relationships in which participating covered entities share protected health information to manage and benefit their common enterprise as "organized health care arrangements."[80] Covered entities in an organized health care arrangement can share protected health information with each other for the arrangement's joint health care operations.[81] **Covered Entities With Multiple Covered Functions.** A covered entity that performs multiple covered functions must operate its different covered functions in compliance with the Privacy Rule provisions applicable to those covered functions.[82] The covered entity may not use or disclose the protected health information of an individual who receives services from one covered function (e.g., health care provider) for another covered function (e.g., health plan) if the individual is not involved with the other function.

	Group Health Plan disclosures to Plan Sponsors. A group health plan and the health insurer or HMO offered by the plan may disclose the following protected health information to the "plan sponsor"—the employer, union, or other employee organization that sponsors and maintains the group health plan[83]: • Enrollment or disenrollment information with respect to the group health plan or a health insurer or HMO offered by the plan. • If requested by the plan sponsor, summary health information for the plan sponsor to use to obtain premium bids for providing health insurance coverage through the group health plan, or to modify, amend, or terminate the group health plan. "Summary health information" is information that summarizes claims history, claims expenses, or types of claims experience of the individuals for whom the plan sponsor has provided health benefits through the group health plan, and that is stripped of all individual identifiers other than five digit zip code (though it need not qualify as de-identified protected health information). • Protected health information of the group health plan's enrollees for the plan sponsor to perform plan administration functions. The plan must receive certification from the plan sponsor that the group health plan document has been amended to impose restrictions on the plan sponsor's use and disclosure of the protected health information. These restrictions must include the representation that the plan sponsor will not use or disclose the protected health information for any employment-related action or decision or in connection with any other benefit plan.
Other Provisions: Personal Representatives and Minors	**Personal Representatives.** The Privacy Rule requires a covered entity to treat a *"personal representative"* the same as the individual, with respect to uses and disclosures of the individual's protected health information, as well as the individual's rights under the Rule.[84] A personal representative is a person legally authorized to make health care decisions on an individual's behalf or to act for a deceased individual or the estate. The Privacy Rule permits an exception when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual. **Special case: Minors.** In most cases, parents are the personal representatives for their minor children. Therefore, in most cases, parents can exercise individual rights, such as access to the medical record, on behalf of their minor children. In certain exceptional cases, the parent is not considered the personal representative. In these situations, the Privacy Rule defers to State and other law to determine the rights of parents to access and control the protected health information of their minor children. If State and other law is silent concerning parental access to the minor's protected health information, a covered entity has discretion to provide or deny a parent access to the minor's health information, provided the decision is made by a licensed health care professional in the exercise of professional judgment. See OCR "Personal Representatives" Guidance.

State Law	**Preemption.** In general, State laws that are contrary to the Privacy Rule are preempted by the federal requirements, which means that the federal requirements will apply.[85] "Contrary" means that it would be impossible for a covered entity to comply with both the State and federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.[86] The Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that (1) relate to the privacy of individually identifiable health information and provide greater privacy protections or privacy rights with respect to such information, (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) require certain health plan reporting, such as for management or financial audits. **Exception Determination.** In addition, preemption of a contrary State law will not occur if HHS determines, in response to a request from a State or other entity or person, that the State law: • Is necessary to prevent fraud and abuse related to the provision of or payment for health care, • Is necessary to ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation, • Is necessary for State reporting on health care delivery or costs, • Is necessary for purposes of serving a compelling public health, safety, or welfare need, and, if a Privacy Rule provision is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or • Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.
Enforcement and Penalties for Noncompliance	**Compliance.** Consistent with the principles for achieving compliance provided in the Rule, HHS will seek the cooperation of covered entities and may provide technical assistance to help them comply voluntarily with the Rule.[87] The Rule provides processes for persons to file complaints with HHS, describes the responsibilities of covered entities to provide records and compliance reports and to cooperate with, and permit access to information for, investigations and compliance reviews. **Civil Money Penalties.** HHS may impose civil money penalties on a covered entity of $100 per failure to comply with a Privacy Rule requirement.[88] That penalty may not exceed $25,000 per year for multiple violations of the identical Privacy Rule requirement in a calendar year. HHS may not impose a civil money penalty under specific circumstances, such as when a violation is due to reasonable cause and did not involve willful neglect and the covered entity corrected the violation within 30 days of when it knew or should have known of the violation.

	Criminal Penalties. A person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of $50,000 and up to one-year imprisonment.[89] The criminal penalties increase to $100,000 and up to five years imprisonment if the wrongful conduct involves false pretenses, and to $250,000 and up to ten years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm. Criminal sanctions will be enforced by the Department of Justice.
Compliance Dates	**Compliance Schedule.** All covered entities, except "small health plans," must be compliant with the Privacy Rule by April 14, 2003.[90] Small health plans, however, have until April 14, 2004 to comply. **Small Health Plans.** A health plan with annual receipts of not more than $5 million is a small health plan.[91] Health plans that file certain federal tax returns and report receipts on those returns should use the guidance provided by the Small Business Administration at 13 Code of Federal Regulations (CFR) 121.104 to calculate annual receipts. Health plans that do not report receipts to the Internal Revenue Service (IRS), for example, group health plans regulated by the Employee Retirement Income Security Act 1974 (ERISA) that are exempt from filing income tax returns, should use proxy measures to determine their annual receipts.[92] See What constitutes a small health plan?
Copies of the Rule & Related Materials	The entire Privacy Rule, as well as guidance and additional materials, may be found on our website, http://www.hhs.gov/ocr/hipaa.

End Notes

[1] Pub. L. 104-191.

[2] 65 FR 82462.

[3] 67 FR 53182.

[4] 45 C.F.R. §§ 160.102, 160.103.

[5] Even if an entity, such as a community health center, does not meet the definition of a health plan, it may, nonetheless, meet the definition of a health care provider, and, if it transmits health information in electronic form in connection with the transactions for which the Secretary of HHS has adopted standards under HIPAA, may still be a covered entity.

[6] 45 C.F.R. §§ 160.102, 160.103; *see* Social Security Act § 1172(a)(3), 42 U.S.C. § 1320d-1(a)(3). The transaction standards are established by the HIPAA Transactions Rule at 45 C.F.R. Part 162.

[7] 45 C.F.R. § 160.103.

[8] 45 C.F.R. § 164.500(b).

[9] 45 C.F.R. § 160.103.

[10] 45 C.F.R. §§ 164.502(e), 164.504(e).

[11] 45 C.F.R. § 164.532

[12] 45 C.F.R. § 160.103.

[13] 45 C.F.R. § 160.103

[14] 45 C.F.R. §§ 164.502(d)(2), 164.514(a) and (b).

[15] The following identifiers of the individual or of relatives, employers, or household members of the individual must be removed to achieve the "safe harbor" method of de-identification: (A) Names; (B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of Census (1) the geographic units formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and (2) the initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000; (C) All elements of dates (except year) for dates directly related to the individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older; (D) Telephone numbers; (E) Fax numbers; (F) Electronic mail addresses: (G) Social security numbers; (H) Medical record numbers; (I) Health plan beneficiary numbers; (J) Account numbers; (K) Certificate/license numbers; (L) Vehicle identifiers and serial numbers, including license plate numbers; (M) Device identifiers and serial numbers; (N) Web Universal Resource Locators (URLs); (O) Internet Protocol (IP) address numbers; (P) Biometric identifiers, including finger and voice prints; (Q) Full face photographic images and any comparable images; and ® any other unique identifying number, characteristic, or code, except as permitted for re-identification purposes provided certain conditions are met. In addition to the removal of the above-stated identifiers, the covered entity may not have actual knowledge that the remaining information could be used alone or in combination with any other information to identify an individual who is subject of the information. 45 C.F.R. § 164.514(b).

[16] 45 C.F.R. § 164.502(a).

[17] 45 C.F.R. § 164.502(a)(2).

[18] 45 C.F.R. § 164.502(a)(1).

[19] 45 C.F.R. § 164.506(c).

[20] 45 C.F.R. § 164.501.

[21] 45 C.F.R. § 164.501.

[22] 45 C.F.R. § 164.501.

[23] 45 C.F.R. § 164.508(a)(2)

[24] 45 C.F.R. § 164.506(b).

[25] 45 C.F.R. § 164.510(a).

[26] 45 C.F.R. § 164.510(b).

[27] 45 C.F.R. §§ 164.502(a)(1)(iii).

[28] *See* 45 C.F.R. § 164.512.

[29] 45 C.F.R. § 164.512(a).

[30] 45 C.F.R. § 164.512(b).

[31] 45 C.F.R. § 164.512(a), (c).

[32] 45 C.F.R. § 164.512(d).

[33] 45 C.F.R. § 164.512(e).

[34] 45 C.F.R. § 164.512(f).

[35] 45 C.F.R. § 164.512(g).

[36] 45 C.F.R. § 164.512(h).

[37] The Privacy Rule defines research as, "a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge." 45 C.F.R. § 164.501.

[38] 45 C.F.R. § 164.512(i).

[39] 45 CFR § 164.514(e).

[40] 45 C.F.R. § 164.512(j).

[41] 45 C.F.R. § 164.512(k).

[42] 45 C.F.R. § 164.512(l).

[43] 45 C.F.R. § 164.514(e). A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: (i) Names; (ii) Postal address information, other than town or city, State and zip code; (iii) Telephone numbers; (iv) Fax numbers; (v) Electronic mail addresses: (vi) Social security numbers; (vii) Medical record numbers; (viii) Health plan beneficiary numbers; (ix) Account numbers; (x) Certificate/license numbers; (xi) Vehicle identifiers and serial numbers, including license plate numbers; (xii) Device identifiers and serial numbers; (xiii) Web Universal Resource Locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) Biometric identifiers, including finger and voice prints; (xvi) Full face photographic images and any comparable images. 45 C.F.R. § 164.514(e)(2).

[44] 45 C.F.R. § 164.508.

[45] A covered entity may condition the provision of health care solely to generate protected health information for disclosure to a third party on the individual giving authorization to disclose the

information to the third party. For example, a covered entity physician may condition the provision of a physical examination to be paid for by a life insurance issuer on an individual's authorization to disclose the results of that examination to the life insurance issuer. A health plan may condition enrollment or benefits eligibility on the individual giving authorization, requested before the individual's enrollment, to obtain protected health information (other than psychotherapy notes) to determine the individual's eligibility or enrollment or for underwriting or risk rating. A covered health care provider may condition treatment related to research (e.g., clinical trials) on the individual giving authorization to use or disclose the individual's protected health information for the research. 45 C.F.R. 508(b)(4).

[46] 45 CFR § 164.532.

[47] "Psychotherapy notes" means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. 45 C.F.R. § 164.501.

[48] 45 C.F.R. § 164.508(a)(2).

[49] 45 C.F.R. §§ 164.501 and 164.508(a)(3).

[50] 45 C.F.R. §§ 164.502(b) and 164.514 (d).

[51] 45 C.F.R. §§ 164.520(a) and (b). A group health plan, or a health insurer or HMO with respect to the group health plan, that intends to disclose protected health information (including enrollment data or summary health information) to the plan sponsor, must state that fact in the notice. Special statements are also required in the notice if a covered entity intends to contact individuals about health-related benefits or services, treatment alternatives, or appointment reminders, or for the covered entity's own fundraising.

[52] 45 C.F.R. § 164.520(c).

[53] 45 C.F.R. § 164.520(d).

[54] 45 C.F.R. § 164.520(c).

[55] 45 C.F.R. § 164.524.

[56] 45 C.F.R. § 164.501.

[57] A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed by a licensed health care professional (who is designated by the covered entity and who did not participate in the original decision to deny), when a licensed health care professional has determined, in the exercise of professional judgment, that: (a) the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (b) the protected health information makes reference to another person (unless such other person is a health care provider) and the access requested is reasonably likely to cause substantial harm to such other person; or (c) the request for access is made by the individual's personal representative and the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

A covered entity may deny access to individuals, without providing the individual an opportunity for review, in the following protected situations: (a) the protected health information falls under an exception to the right of access; (b) an inmate request for protected health information under certain circumstances; (c) information that a provider creates or obtains in the course of research that includes treatment for which the individual has agreed not to have access as part of consenting

to participate in the research (as long as access to the information is restored upon completion of the research); (d) for records subject to the Privacy Act, information to which access may be denied under the Privacy Act, 5 U.S.C. § 552a; and (e) information obtained under a promise of confidentiality from a source other than a health care provider, if granting access would likely reveal the source. 45 C.F.R. § 164.524.

[58] 45 C.F.R. § 164.526.

[59] Covered entities may deny an individual's request for amendment only under specified circumstances. A covered entity may deny the request if it: (a) may exclude the information from access by the individual; (b) did not create the information (unless the individual provides a reasonable basis to believe the originator is no longer available); (c) determines that the information is accurate and complete; or (d) does not hold the information in its designated record set. 164.526(a)(2).

[60] 45 C.F.R. § 164.528.

[61] 45 C.F.R. § 164.522(a).

[62] 45 C.F.R. § 164.522(a). In addition, a restriction agreed to by a covered entity is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

[63] 45 C.F.R. § 164.522(b).

[64] 45 C.F.R. § 164.530(i).

[65] 45 C.F.R. § 164.530(a).

[66] 45 C.F.R. §160.103.

[67] 45 C.F.R. § 164.530(b).

[68] 45 C.F.R. § 164.530(e).

[69] 45 C.F.R. § 164.530(f).

[70] 45 C.F.R. § 164.530(c).

[71] 45 C.F.R. § 164.530(d).

[72] 45 C.F.R. § 164.520(b)(1)(vi).

[73] 45 C.F.R. § 164.530(g).

[74] 45 C.F.R. § 164.530(h).

[75] 45 C.F.R. § 164.530(j).

[76] 45 C.F.R. § 164.530(k).

[77] 45 C.F.R. §§ 164.103, 164.105.

[78] 45 C.F.R. § 164.103.

[79] 45 C.F.R. §164.105. Common ownership exists if an entity possesses an ownership or equity interest of five percent or more in another entity; common control exists if an entity has the direct or indirect power significantly to influence or direct the actions or policies of another entity. 45 C.F.R. §§ 164.103.

[80] The Privacy Rule at 45 C.F.R. § 160.103 identifies five types of organized health care arrangements:

- A clinically-integrated setting where individuals typically receive health care from more than one provider.
- An organized system of health care in which the participating covered entities hold themselves out to the public as part of a joint arrangement and jointly engage in

utilization review, quality assessment and improvement activities, or risk-sharing payment activities.

- A group health plan and the health insurer or HMO that insures the plan's benefits, with respect to protected health information created or received by the insurer or HMO that relates to individuals who are or have been participants or beneficiaries of the group health plan.
- All group health plans maintained by the same plan sponsor.
- All group health plans maintained by the same plan sponsor and all health insurers and HMOs that insure the plans' benefits, with respect to protected health information created or received by the insurers or HMOs that relates to individuals who are or have been participants or beneficiaries in the group health plans.

[81] 45 C.F.R. § 164.506(c)(5).

[82] 45 C.F.R. § 164.504(g).

[83] 45 C.F.R. § 164.504(f).

[84] 45 C.F.R. § 164.502(g).

[85] 45 C.F.R. §160.203.

[86] 45 C.F.R. § 160.202.

[87] 45 C.F.R.§ 160.304

[88] Pub. L. 104-191; 42 U.S.C. §1320d-5.

[89] Pub. L. 104-191; 42 U.S.C. §1320d-6.

[90] 45 C.F.R. § 164.534.

[91] 45 C.F.R. § 160.103.

[92] Fully insured health plans should use the amount of total premiums that they paid for health insurance benefits during the plan's last full fiscal year. Self-insured plans, both funded and unfunded, should use the total amount paid for health care claims by the employer, plan sponsor or benefit fund, as applicable to their circumstances, on behalf of the plan during the plan's last full fiscal year. Those plans that provide health benefits through a mix of purchased insurance and self-insurance should combine proxy measures to determine their total annual receipts.

The Supreme Court of Texas

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June 16, 2003

Mr. Charles L. Babcock, Chairman
Supreme Court Advisory Committee
Jackson Walker
901 Main Street, Suite 6000
Dallas TX 75202-3797

Dear Chip:

As you know, the Seventy-Eighth Legislature has delegated to the Supreme Court the responsibility for drafting rules to implement House Bill 4. Three major assignments are:

- MDL rules: to adopt rules of practice and procedure for the judicial panel on multidistrict litigation created by chapter 74, subchapter H of the Government Code (HB 4, § 3.02);

- Offer-of-settlement rules: to promulgate rules implementing chapter 42 of the Civil Practice and Remedies Code providing for offers of settlement (HB 4, § 2.01); and

- Class action rules: to adopt rules to provide for the fair and efficient resolution of class actions, including rules that comply with the mandatory guidelines of chapter 26 of the Civil Practice and Remedies Code (HB 4, § 1.01).

HB 4 also directs that Rule 407(a) of the Texas Rules of Evidence be amended to conform to Rule 407 of the Federal Rules of Evidence (HB 4, § 5.03). In addition, other rules changes may be necessary or appropriate because of the enactment of HB 4 and other statutes this session. Chris Griesel, the Court's Rules Attorney, has compiled the attached list of possible changes, which you will see is quite lengthy. This is only a preliminary list.

The Supreme Court is of the view that the Legislature's delegation of rule-making responsibility to the Supreme Court to effectuate the Legislature's policy choices is in the best interests of the administration of justice and of the people of Texas. The Legislature's actions this year reconfirm the statement of the Forty-Sixth Legislature that "it is essential to place the rule-making power in civil actions in the Supreme Court, whose knowledge, experience, and intimate contact with the problems of judicial administration render that Court particularly qualified to mitigate and cure these evils [of unnecessary delay and expense to litigants]." Act of

May 12, 1939, 46th Leg., R.S., ch. 25, 1939 Tex. Gen. Laws 201, 202 (enacting what is now Tex. Gov't Code § 22.004). The Supreme Court gladly accepts this responsibility and intends to comply fully with the Legislature's directives.

The Court relies heavily on the counsel of its Advisory Committee, as it has for sixty-four years. The members of the Committee should consider the Legislature's faith in the rule-making process a credit to their wisdom and experience and to the value of their work. I and my colleagues look forward to working with you on these new assignments.

The amendment to Rule 407(a) of the Texas Rules of Evidence is to be made "[a]s soon as practicable" after HB 4's effective date, September 1, 2003 (HB 4, § 5.03). The MDL rules also apply beginning that date. The class action rules are to be "adopted on or before December 31, 2003", and the offer-of-settlement rules "must be in effect on January 1, 2004." The Supreme Court is tentatively of the view that the deadlines specified in HB 4 take precedence over the requirements for publication and comment contained in sections 22.004 and 74.024 of the Government Code but that those requirements should be followed where possible. Therefore, the Court has adopted the following schedule:

- The Court will next meet to consider the Committee's recommendations and any other matters pertaining to rules changes the week of August 25, 2003.

- Effective September 1, 2003, the Court will amend Rule 407(a) of the Texas Rules of Evidence and adopt MDL rules, both to be disseminated to the bench and bar as widely as possible and published in the October issue of the *Texas Bar Journal* for formal comment. The changes may be revised following comments.

- The Court will also publish in the October issue of the *Texas Bar Journal* for comment an offer-of-settlement rule and a revised class action rule to comply with HB 4's mandatory guidelines, both rules to take effect January 1, 2004.

- In the October issue of the *Texas Bar Journal*, or as soon thereafter as possible, the Court will publish for comment any further changes in the class action rule, any rules changes adopted in accordance with pending recommendations by the Advisory Committee, and any rules changes to be made regarding ad litem fees and referral fees, as recommended by the Jamail Committee.

The Court believes that this schedule will comply with the mandates of HB 4, permit as much comment as possible, allow for reaction to that comment, complete related pending work before the Committee, and complete action on Committee recommendations already made. Other proposals before the Committee, and other changes that may be necessary or appropriate due to recent legislation, should be deferred until the proposed schedule has been completed.

I fully realize that this is an enormous amount of work for the Committee, but I believe the Committee is

entirely capable of assisting the Court in discharging its responsibility.

The following issues are of interest to the Court:

- Rule 407(a), Texas Rules of Evidence: What impediments are there to simply conforming the language to Rule 407 of the Federal Rules of Evidence?

- MDL rules: How should the judicial panel function? Where should it meet? When must issues be decided by a hearing before the panel and when by submission? May the panel confer and decide issues by telephone, by letter, or by email? Where will records be kept? Should policies for decision be stated in the rules or left entirely for the panel to set? Assuming that policies should be thoroughly stated in the rules, what should those policies be?

- Offer-of-settlement rule: Can the work already done by the Committee on this rule be modified to comply with the requirements of HB 4? What additional parameters should be included consistent with those requirements?

- Class action rule: In addition to changes required by HB 4's mandatory guidelines, should the rule require opt-in classes for certain claims? Assuming that it should, what should those claims be?

As always, Chip, the Supreme Court extends to you and all of the members of the Committee its deepest gratitude.

Sincerely,

Nathan L. Hecht
Justice

c: The Chief Justice and Justices of the Supreme Court of Texas
The Members of the Supreme Court Advisory Committee
The Members of the Jamail Committee
The Hon. Bill Ratliff
The Hon. Joe Nixon

SUMMARY OF RULES CHANGES TO EXAMINE

BILL (section or article affected)	NATURE OF LEGISLATIVE CHANGE	RULES TO EXAMINE
HB 4		
Sec 1.01	By 12/31/03, the "Supreme Court shall adopt rules to provide for fair and efficient resolution of class actions". Bill lays out some guidelines for class fee recovery	TRCP 42. Consider the Committee's previous work on the subject, including review of previous Jamail committee drafts, and make suggestions ✓
Sec. 1.02	Amends cases that are appealable by interlocutory appeal to the Supreme Court and defines "conflicts jurisdiction"	Review TRAP rules, including Rule 53.2
Sec. 1.03	Amends list of cases that may be brought by interlocutory appeal; Allows certain classes of cases to be stayed pending appellate resolution; defines "conflicts jurisdiction"	Review TRAP rules, including comment to TRAP 29 and Rule 53.2
Sec. 1.05	The effective date of this bill is 9/01/03 and appeals to all appeals filed after that date	Does the Court need to take any "emergency" rules action before 9/01/03 ? ✓
Sec. 2.01	By 12/31/03, the "Supreme Court shall promulgate rules implementing" the offer of settlement provisions of HB 4. The bill lays out more extensive guidelines for provisions of the rules but leaves the court with a number of issues to resolve.	Compare the committee's existing work to the guidelines of HB 4 and make any additional suggestions
Sec. 3.01	The Supreme Court may adopt " rules relating to the transfer of related cases for consolidated or coordinated pretrial proceeding" (A similar, slightly narrower, grant of authority was also given the Court by HB 3386) The Legislature created a "judicial panel on multidistrict litigation". The Chief Justice will appoint 5 active court of appeals or administrative judges to the panel. The rules must allow the panel to transfer related civil actions for consolidated or coordinated pretrial	Determine changes needed to TRCP or Rules of Judicial Administration. Consider the operation of existing RJA 11 and federal MDL rules

	proceedings; allow for transfers and remands of actions; and provide for appellate relief of the panel's orders.	
Sec. 3.03	Plaintiffs added by joinder are required to independently meet venue provisions or face mandatory transfer to county of proper venue or face dismissal	Determine if joinder rules ,TRCP 39 et.seq, require amendment. Determine if interlocutory appeal provision, including stay provision, requires TRAP change or comment.
Sec. 4.01 et seq.	Changes made to proportionate responsibility submission and designation of responsible parties. Changes in some cases the method of reducing damages from dollar amount to percentage amount	Determine if these changes require amendment to TRCP, including rules affecting submission of charge
Sec. 4.12	Requires amendment of TRCP Rule 194.2, as soon as practicable, to include disclosure of responsible third parties	TRCP Rule 194.2
Sec. 5.01 et seq.	Makes changes to liability of defendants in certain products cases	Determine if these changes require amendment to TRCP
Sec. 5.03	Requires Supreme Court to amend TRE Rule 407(a) to conform with FRE Rule 407	TRE Rule 407(a)
Sec. 7.01 et seq.	Creates statutory changes to amount of appeals bonds. Applies to any judgment filed after 9/01/03	Determine changes needed to TRAP, including TRAP 24. Does the Court need to take any "emergency" rules action before 9/01/03 ?
Sec. 8.01	HB 4 repeals evidentiary bar on seat belt non-use.	Determine if this bar is mentioned in TRCP or TRE and suggest appropriate changes
Sec. 10.01 et seq.	Revision of methods for notice, evidence, and procedure of medical liability and medical malpractice actions	HB 4 creates an new system of notice and pleadings, submission of expert reports, and discovery for health care liability claims.

		Determine what actions to take to modify existing TRCP, TRE, and TRAP rules relating to pleading and discovery rules to, at the minimum, place bench and bar on notice of the conflicting health care liability provisions. Consider the adoption of Section 74.002, Civil Practice and Remedies Code in Section 10.01 relating to conflicts between court rules and the statute. Also consider a method to advise bench and bar that "local rules" may not conflict with the statutory changes Change all 4590i references to Chapter 74, Civil Practice and Remedies Code.
Sec 13.03	Statutory change requiring exemplary damage jury verdict be unanimous and a jury charge must contain a instruction alerting the jury to that fact	Determine changes needed to TRCP, including TRCP 292. Does the Court need to take any "emergency" rules action before 9/01/03 ?
Sec. 23.02	Various portions of HB 4 become effective on various dates and apply to differing classes of cases	Does the Court need to take any immediate action or make "emergency" rules action on any of the changes to the court rules?
ALL		Alert the court to any other rules changes required by HB 4

Family Code Issues		
HB 821 Sec.1 HB 518 Sec. 1 HB 1815 (all) HB 883 (all)	This bill allows notice of an associate judge's report , including proposed order, to be given by fax and creates a rebuttable presumption of receipt. Creates new method of service by publication and new method for calculating the date notice is given Alters scope and duties of guardian ad litems and attorney ad litems in suits affecting parent child relationship The date an agreed order or a default order is signed by an associate family law judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.	Determine if these changes require amendment to TRCP
Other Changes		
HB 3306 HB 3386	Objections to a visiting judge must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earlier. Notice of an assignment may be given and an objection to an assignment may be filed by electronic mail. Allows the Supreme Court to adopt Rules of Judicial Administration to allow for the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending.	Determine if these changes require amendment to TRCP or RJA
SB 352	A judge commits an offense if the judge solicits or	Determine if this prohibition

	accepts a gift or a referral fee in exchange for referring any kind of legal business to an attorney or law firm. This does not prohibit a judge from soliciting funds for appropriate campaign or officeholder expenses as permitted by Canon 4D, Code of Judicial Conduct or from accepting a gift in accordance with the provisions of Canon 4D, Code of Judicial Conduct.	needs to be included within recusal rule before court or is already covered
SB 1601	Before entering an order approving settlement or judgment, the court shall require all defendants to report to the court by a certain date the total amount of all funds paid to the class members. After the report is received, the court may amend the settlement or judgment to direct each defendant to pay the sum of any unpaid funds to the clerk of the court. The unpaid funds will be placed in a trust fund and may be spent only to programs approved by the supreme court that provide civil legal services to the indigent.	Determine if a change to TRCP, including Rule 42 is appropriate.

MEMORANDUM

To: Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 11, 2004

Re: Appellate Rule Changes

At our last meeting, the Appellate Rules Subcommittee was requested to consider the following matters:

1. *Adoption of an Appellate Rule to implement the interim appeal provisions of Civil Practice and Remedies Code Section 51.014 (d)-(f).* In 2001, the 77th Texas Legislature adopted for Section 51.014 authorizing courts of appeals to "permit" an immediate interlocutory appeals of non-final orders (not otherwise immediately appealable) if a "district court" issues a written order for such an interlocutory appeal and the parties agree to the order. C.P.R.C. § 51.014 (d)-(f); *see Watson v. Moray*, 133 S.W.3d 877 (Tex.App.–Dallas 2004, no pet. n.) (dismissing appeal for want of jurisdiction because subsection (d)'s requirements not met); *See also Stolte v. County of Guadalupe*, ____ S.W.3d ____, 2004 Tex.App. LEXIS 4685 (Tex. App. - San Antonio 2004, no pet. h.); *In re D.B.*, 80 S.W.3d 698, 701 (Tex.App.–Dallas 2002, no pet.).

Section 51.014 (d)-(f) has no counterpart in the Texas Rules of Appellate Procedure showing how the court of appeals' permission should be requested.

A federal statute has long provided for a somewhat similar appeal of an interlocutory decision. *See* 28 U.S.C. § 1292 (b). In addition, Federal Appellate

Rule 5 prescribes a general rule for seeking permission to appeal from a federal court of appeals. When federal appellate review is discretionary. The Committee Note to the 1998 Amendment of Rule 5 provides that "[t]his new Rule 5 is intended to govern all discretionary appeals from district court orders, judgments, or decrees." A copy of Federal Appellate Rule 5 is attached for your consideration.

The Appellate Rules Subcommittee recommends adoption of a new Rule 26.2 implementing Civil Practice and Remedies Code Section 51.014 (d)-(f). A draft proposal of the proposed rule is attached as Attachment A.

2. *Revision of Appellate Rules dealing with accelerated and expedited appeals provided for by statute, particularly in cases involving termination of parental rights.* Appellate Rules 26 (Time to Perfect Appeal) 28 (Accelerated Appeals in Civil Cases) and 29 (Orders Pending Interlocutory Appeal in Civil Cases) all deal with so-called "accelerated" appeals, which are intended to proceed through the appellate process on a faster track than ordinary appeals, particularly ordinary appeals that operate under the extended-90 day perfection timetable that applies to most ordinary appeals.

At present, because of legislative enactments not referenced in the appellate rules which also provide for expedited appellate activity, the foregoing appellate rules create a trap for appellate counsel that requires attention. For example, Family Code Section 109.002(a) provides that:

> "An appeal in a suit in which termination of the parent-child relationship is in issue shall be given precedence over other civil cases and shall be accelerated by the appellate courts. The procedures for an accelerated appeal under the Texas Rules of Civil Procedure apply to an appeal in which the termination of the parent-child relationship is in issue."

In addition, Family Code Section 263.405 provides that "[a]n appeal of a final order rendered under [subchapter E (Final Order for Child Under Department Care) of Chapter 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services)] is governed by the rules of the supreme court for accelerated appeals in civil cases and the procedures provided by this

section." Fam. C. § 263.405. Family Code Chapter 263 applies to cases in which termination of the parent-child relationship is sought by the Department of Protective and Regulatory Services. *See In re J.A.G.*, 92 S.W.3d 537, 539-540 (TexApp.–Amarillo2002, no pet) – appeal dismissed because notice of appeal was not filed within 20 days after termination order was signed; *In re T.W.*, 89 S.W.3d 641, 641-642 (Tex.App.–Amarillo 2002, no pet.) – same; *see also In re A.J.K.*, 116 S.W. 3d 165, 167-173 (Tex. App.–Houston [14th Dist.] 2003, no pet. h.) – accelerated appeal rules apply to cases brought by DPRS even if DPRS abandons request for termination. It also applies to cases in which the Department of Protective and Regulatory Services is appointed as a managing conservator without termination of parental rights Fam. C. § 263.404.

The subcommittee recommends that Appellate Rule 28 should be amended to reflect that in such cases, accelerated appeal procedures and other special statutory requirements must be satisfied. A copy of the proposed amendment is attached and included in Attachment B.

3. *Additional Amendment to Appellate Rule 29.* The original version of Appellate Rule 29.5 provided that during the pendency of "an appeal from an interlocutory order" a "trial court retains jurisdiction" and "may proceed with a trial on the merits." *See* former App. R. 29.5. As amended in 2002 to conform to the 2001 version of Civil Practice and Remedies Code § 51.014 (b), the words "if permitted by law" were added because the 2001 statute provided: "An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), shall have the effect of staying commencement of a trial in the trial court pending resolution of the appeal." *Id.* But in 2003, Section 51.014 (b) was amended further to provide that accelerated appeals of interlocutory orders under (a)(3), (a)(5) and (a)(8) stay "all other proceeding in the trial court pending resolution of that appeal." As a result, the subcommittee recommends that Appellate Rule 29 be amended again to conform to the 2003 amendments to Section 51.014 (b). A copy of the proposed amendment is attached and included in Attachment B.

4. Consideration of Chief Justice Radack's suggestions for certificates of service and certificates of conference on rehearing motions.

Attachment A

MEMORANDUM

To: Appellate Rules Subcommittee, Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 9, 2004 (Revised August 10, 2004)

Re: Appellate Rules Changes

As promised here is a draft of an Appellate Rule designed to implement the interim appeal provisions of Civil Practice and Remedies Code Section 51.014 (d)-(f). Additional draft rule changes will be sent by separate emails.

1. *Proposed Changes to Rule 25.* Change 25.1 (Civil Cases) to (Civil Cases-Appeal As of Right) and add the following language at the end of the first sentence "within the time allowed by Rule 26". *See* Fed. R. App. P. 3 (Appeal As of Right-How Taken) and Former Tex. R. App.P. 40 (Ordinary Appeal-How Perfected).

2. Add a new 25.2 (Civil Cases-Appeal By Permission).

3. Change 25.2 (Criminal Cases) to 25.3

4. Rule 25. Perfecting Appeal

25.1 Civil Cases – Appeal as of Right

a. *Notice of Appeal.* An appeal is perfected when a written notice of appeal is filed with the trial court clerk *within the time allowed by Rule 26.* If a notice of appeal *etc.*

b. *Petition for Permission to Appeal.* To request permission to appeal an interlocutory order that is not otherwise appealable as of right, a party must file a petition for permission to appeal not later than the 10th day after the date a district court signs a written order granting permission to appeal.

c. *Contents of Petition.* The petition must:

(1) identify the trial court and state the case's trial court number and style;

(2) give a complete list of all parties to the order complained of and the names and addresses of all trial and appellate counsel;

(3) identify the order granting permission to appeal by stating the date of the order and attaching to the petition a copy of the order stating the district court's permission to appeal or stating that the statutory conditions are met;

(4) identify the interlocutory order complained of by the appellant by stating the date of the order and attaching a copy of the order to the petition;

(5) state that all parties agree to the order granting permission to appeal;

(6) state the court of appeals to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the petition must state that the petition is addressed to either of those courts; and

(7) state concisely the issues or points presented, the facts necessary to understand the issues or points presented, the reasons why the appeal is authorized and should be allowed and the relief sought.

d. *Other papers.* If any party timely files a petition, another party may file a response or another petition not later than 7 days after the initial petition is served.

e. *Length of Petitions*. Except by the court's permission, a petition must not exceed 5 pages, exclusive of pages containing the identity of parties and counsel, any table of contents, any index of authorities, the issues presented, the signature and proof of service and the accompanying documents required to be attached to the petition.

f. *Grant of Petition; Fees; Filing the Record.*

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(a) request in writing that the official reporter prepare the reporter's record;

(b) notify the trial court clerk that permission to appeal has been granted and file any written designation specifying items to be included in the clerk's record; and

(c) pay any required fees.

(2) *A notice of appeal need not be filed.* The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The appellate record must be filed within 10 days after entry of the order granting permission to appeal.

COMMENT: This new Rule 25.2 is intended to govern discretionary appeals from trial court orders pursuant to Civil Practice and Remedies Code Section 51.014 (d)-(f).

MEMORANDUM

To: Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 11, 2004

Re: Additional Alternatives

Alternative (7)

State concisely the issues of points presented, the facts necessary to understand the issues or points presented, the reasons why the order complained of involves a controlling questions of law as to which there is substantial ground for difference of opinion, why an immediate appeal may materially advance the ultimate termination of the litigation, and the relief sought.

Consider adding

(c) Extension of Time. The appellate court may extend the time to file the petition for permission to appeal if, within 15 days after the deadline for filing the petition, the party:

(a) files in the trial court the petition for permission to appeal; and

(b) files in the appellate court a motion complying with Rule 10.5(b).

Change (c) to (d) etc.

Attachment B

MEMORANDUM

To: Appellate Rules Subcommittee, Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 9, 2004 (Revised August 10, 2004)

Re: Appellate Rules Changes

Here are my suggested revisions for Rules 12, 26, 28, and 29.

Rule 12. *Duties of Appellate Clerk*

Rule 12.1 *Docketing the Case.*

On receiving a copy of the notice of appeal, *the petition for permission to appeal*, the petition for review, the petition for discretionary proceeding, or a certified question, the appellate clerk must:

(a) . . .
(b) . . .
(c) docket for case

Etc.

Rule 26. *Time to Perfect Appeal.*

26.1 *Civil Cases.* The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a)

↓

(d) *in appeals with procedural requirements prescribed by specific statutes, within the time provided by statute.*

COMMENT to the 2004 Change: The Texas Legislature has enacted specific statutes providing expedited appellate timetables in certain cases. *See e.g.* Health & Safety C. § 81.191 – appeals from orders for management of persons with communicable diseases, notice of appeal must be filed within 10 days; Health & Safety C. § 574.070 – appeals from orders requiring mental health services, notice of appeal must be filed within 10 days. This change is to advise parties and their counsel to consult pertinent statutes which provide specific procedural requirements.

Rule 28. *Accelerated Appeals in Civil Cases.*

28.1 *Interlocutory Orders. ...*

28.2 *Quo Warranto.*

28.3 *Termination of Parental Rights.*

An appeal in a suit in which termination of parent-child relationship is in issue must be given precedence over other civil cases and the procedures for an accelerated appeal apply to any appeal in which termination of the parent-child relationship is in issue. An appeal from a final order appointing the Department of Protective and Regulatory Services as managing conservator without terminating parental rights is also governed by the rules for accelerated appeals in civil cases.

COMMENTS to 2004 change: New Rule 28.3 has been added to advise parties and their counsel that appeals from final judgments granting or denying termination of parental rights are accelerated appeals governed by the rules for accelerated appeals and by additional procedures provided by statute. *See* Fam. C. § 109.002; *see also* Fam. C. §§ 263.404; 263.405.

Rule 29.5 *Further Proceedings in Trial Court.* While appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and *unless prohibited by statute* may make further orders, including one dissolving the order *complained of on appeal. If permitted by law, the trial court may proceed with a trial on the merits. But the court . . .*

COMMENT to 2004 change: Rule 29.5 is amended to conform to Sections 51.014 (b) and (c) of the Civil Practice and Remedies Code which provide complex procedures for staying proceedings in cases governed by Section 51.014 (a).

party was entitled to notice of the entry of judgment and did not receive it "from the clerk or any party within 21 days of its entry." The Advisory Committee makes a substantive change. The finding must be that the movant did not receive notice "from the district court or any party within 21 days after entry." This change broadens the type of notice that can preclude reopening the time for appeal. The existing rule provides that only notice from a party or from the clerk bars reopening. The new language precludes reopening if the movant has received notice from "the court."

Subdivision (c). Substantive amendments are made in this subdivision. The current rule provides that if an inmate confined in an institution files a notice of appeal by depositing it in the institution's internal mail system, the notice is timely filed if deposited on or before the last day for filing. Some institutions have special internal mail systems for handling legal mail; such systems often record the date of deposit of mail by an inmate, the date of delivery of mail to an inmate, etc. The Advisory Committee amends the rule to require an inmate to use the system designed for legal mail, if there is one, in order to receive the benefit of this subdivision.

When an inmate uses the filing method authorized by subdivision (c), the current rule provides that the time for other parties to appeal begins to run from the date the district court "receives" the inmate's notice of appeal. The rule is amended so that the time for other parties begins to run when the district court "dockets" the inmate's appeal. A court may "receive" a paper when its mail is delivered to it even if the mail is not processed for a day or two, making the date of receipt uncertain. "Docketing" is an easily identified event. The change eliminates uncertainty. Paragraph (c)(3) is further amended to make it clear that the time for the government to file its appeal runs from the later of the entry of the judgment or order appealed from or the district court's docketing of a defendant's notice filed under this paragraph (c).

Rule 5. Appeal by Permission.

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) **Form of Papers; Number of Copies.** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) **Grant of Permission; Fees; Cost Bond; Filing the Record.**

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c). [*Adopted Dec. 4, 1967, effective July 1, 1968; amended Apr. 30, 1979, effective Aug. 1, 1979; Apr. 29, 1994, effective Dec. 1, 1994; Apr. 24, 1998, effective Dec. 1, 1998; Apr. 29, 2002, effective Dec. 1, 2002.*]

Committee Note to 2002 Amendment of Rule 5

Subdivision (c). A petition for permission to appeal, a crosspetition for permission to appeal, and an answer to a petition or crosspetition for permission to appeal are all "other papers" for purposes of Rule 32(c)(2), and all of the requirements of Rule 32(a) apply to those papers, except as provided in Rule 32(c)(2). During the 1998 restyling of the Federal Rules of Appellate Procedure, Rule 5(c) was inadvertently changed to suggest that only the requirements of Rule 32(a)(1) apply to such papers. Rule 5(c) has been amended to correct that error.

Rule 5(c) has been further amended to limit the length of papers filed under Rule 5.

Committee Note to 1998 Amendment of Rule 5

In 1992 Congress added subsection (e) to 28 U.S.C. § 1292. Subsection (e) says that the Supreme Court has power to prescribe rules that "provide for an appeal of an interlocutory decision to the courts of appeals

that is not otherwise provided for" in section 1292. The amendment of Rule 5 was prompted by the possibility of new rules authorizing additional interlocutory appeals. Rather than add a separate rule governing each such appeal, the Committee believes it is preferable to amend Rule 5 so that it will govern all such appeals.

In addition the Federal Courts Improvement Act of 1996, Pub. L. 104-317, abolished appeals by permission under 28 U.S.C. § 636(c)(5), making Rule 5.1 obsolete.

This new Rule 5 is intended to govern all discretionary appeals from district-court orders, judgments, or decrees. At this time that includes interlocutory appeals under 28 U.S.C. § 1292(b), (c)(1), and (d)(1) & (2). If additional interlocutory appeals are authorized under § 1292(e), the new Rule is intended to govern them if the appeals are discretionary.

Subdivision (a). Paragraph (a)(1) says that when granting an appeal is within a court of appeals' discretion, a party may file a petition for permission to appeal. The time for filing provision states only that the petition must be filed within the time provided in the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

Section 1292(b), (c), and (d) provide that the petition must be filed within 10 days after entry of the order containing the statement prescribed in the statute. Existing Rule 5(a) provides that if a district court amends an order to contain the prescribed statement, the petition must be filed within 10 days after entry of the amended order. The new rule similarly says that if a party cannot petition without the district court's permission or statement that necessary circumstances are present, the district court may amend its order to include such a statement and the time to petition runs from entry of the amended order.

The provision that the Rule 4(a) time for filing a notice of appeal should apply if the statute or rule is silent about the filing time was drawn from existing Rule 5.1.

Subdivision (b). The changes made in the provisions in paragraph (b)(1) are intended only to broaden them sufficiently to make them appropriate for all discretionary appeals.

In paragraph (b)(2) a uniform time — 7 days — is established for filing an answer in opposition or cross-petition. Seven days is the time for responding under existing Rule 5 and is an appropriate length of time when dealing with an interlocutory appeal. Although existing Rule 5.1 provides 14 days for responding, the Committee does not believe that the longer response time is necessary.

Subdivision (c). Subdivision (c) is substantively unchanged.

Subdivision (d). Paragraph (d)(2) is amended to state that "the date when the order granting permission to appeal is entered serves as the date of the notice of appeal" for purposes of calculating time under the rules. That language simply clarifies existing practice.

Rule 5.1. Appeal by Leave Under 28 U.S.C. § 636(c)(5). [Abrogated]

[Adopted Mar. 10, 1986, effective July 1, 1986; amended Apr. 22, 1993, effective Dec. 1, 1993; Apr. 29, 1994, effective Dec. 1, 1994; abrogated Apr. 24, 1998, effective Dec. 1, 1998.]

Committee Note to 1998 Abrogation of Rule 5.1

The Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, abolished appeals by permission under 28 U.S.C. § 636(c)(5), making Rule 5.1 obsolete. Rule 5.1 is, therefore, abrogated.

Rule 7. Bond for Costs on Appeal in a Civil Case.

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule. *[Adopted Dec. 4, 1967, effective July 1, 1968; amended Apr. 30, 1979, effective Aug. 1, 1979; Apr. 24, 1998, effective Dec. 1, 1998.]*

interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

Leg.H. Stats. 1997 75th Leg. Sess. Ch. 600, effective September 1, 1997, Chs. 603, 1022, effective January 1, 1998; Stats. 2001 77th Leg. Sess. Ch. 1090, effective September 1, 2001 (renumbered from §263.403).

1997 Note: §263.404 applies to a pending suit affecting the parent-child relationship regardless of whether the suit was commenced before, on, or after January 1, 1998, except: if the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before January 1, 1998, the court shall at the first hearing conducted on or after that date under Chapter 263, Family Code, establish a date for dismissal of the suit not later than the second anniversary of the date of the hearing, unless the court has rendered a final order before the dismissal date. Stats. 1997 75th Leg. Sess. Chs. 603 §14(b), (c), 1022 §108(b), (c).

§263.405. Appeal of Final Order.

(a) An appeal of a final order rendered under this subchapter is governed by the rules of the supreme court for accelerated appeals in civil cases and the procedures provided by this section. The appellate court shall render its final order or judgment with the least possible delay.

(b) Not later than the 15th day after the date a final order is signed by the trial judge, a party intending to appeal the order must file with the trial court a statement of the point or points on which the party intends to appeal. The statement may be combined with a motion for a new trial.

(c) A motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or the deadline for filing an affidavit of indigence under Rule 20, Texas Rules of Appellate Procedure.

(d) The trial court shall hold a hearing not later than the 30th day after the date the final order is signed to determine whether:

(1) a new trial should be granted;

(2) a party's claim of indigence, if any, should be sustained; and

(3) the appeal is frivolous as provided by Section 13.003(b), Civil Practice and Remedies Code.

(e) If a party claims indigency and requests the appointment of an attorney, the court shall require the person to file an affidavit of indigency and shall hear evidence to determine the issue of indigency. If the court does not render a written order denying the claim of indigence or requiring the person to pay partial costs before the 36th day after the date the final order being appealed is signed, the court shall consider the person to be indigent and shall appoint counsel to represent the person.

(f) The appellate record must be filed in the appellate court not later than the 60th day after the date the final order is signed by the trial judge, unless the trial court,

after a hearing, grants a new trial or denies a request for a trial court record at no cost.

(g) The appellant may appeal the court's order denying the appellant's claim of indigence or the court's finding that the appeal is frivolous by filing with the appellate court the reporter's record and clerk's record of the hearing held under this section, both of which shall be provided without advance payment, not later than the 10th day after the date the court makes the decision. The appellate court shall review the records and may require the parties to file appellate briefs on the issues presented, but may not hear oral argument on the issues. The appellate court shall render appropriate orders after reviewing the records and appellate briefs, if any.

(h) Except on a showing of good cause, the appellate court may not extend the time for filing a record or appellate brief. **Leg.H.** Stats. 2001 77th Leg. Sess. Ch. 1090, effective September 1, 2001.

In re M.A.H., 104 S.W.3d 568, 569 (Tex. App.—Waco 2002, no pet. h.); ***In re B.G.***, 104 S.W.3d 565, 567 (Tex. App.—Waco 2002, no pet. h.). In termination suit filed by DPRS, motion for new trial does not extend the due date for a notice of appeal. However, court of appeals may extend time for filing notice of appeal if party files notice of appeal in trial court and motion for extension in court of appeals within 15 days after deadline for filing notice of appeal. If party files notice of appeal within this 15-day window, court of appeals will imply motion for extension if party shows reasonable explanation for late filing.

In re D.R.L.M., 84 S.W.3d 281, 291 (Tex. App.—Fort Worth 2002, pet. denied). As long as appellant timely files notice of appeal, litigant's failure to file statement of points within 15 days of date final order is signed by trial court does not deprive court of appeals of jurisdiction over appeal from that order.

In re H.R., 87 S.W.3d 691, 701–703 (Tex. App.—San Antonio 2002, no pet. h.). In cases in which trial court has appointed attorney to represent parent at trial level, practical effect of accelerated appellate timetable is to place parent's trial counsel in position of being appellate counsel as well, because it is this attorney who will undertake required steps to preserve client's appellate rights by filing motion for new trial, statement of appellate points, and notice of appeal.

§263.406. Court Information System.

The Office of Court Administration of the Texas Judicial System shall consult with the courts presiding over cases brought by the department for the protection of children to develop an information system to track compliance with the requirements of this subchapter for the timely disposition of those cases. **Leg.H.** Stats. 1997 75th Leg. Sess. Ch. 600, effective September 1, 1997; Stats. 2001 77th Leg. Sess. Ch. 1090, effective September 1, 2001 (renumbered from §263.404).

Sec. 263.407. Final Order Appointing Department as Managing Conservator of Certain Abandoned Children; Termination of Parental Rights.

(a) In a suit to terminate the parent-child relationship, there is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with Subchapter D, Chapter 262, consents to the termination of parental rights with regard to the child.

(b) If a person claims to be the parent of a child taken into possession under Subchapter D, Chapter 262, before the court renders a final order terminating the parental rights of the child's parents, the court shall order genetic testing for parentage determination unless parentage has previously been established. The court shall hold the petition for termination of the parent-child relationship in abeyance for a period not to exceed 60 days pending the results of the genetic testing. **Leg.H.** Stats. 2001 77th Leg. Sess. Ch. 809, effective September 1, 2001; Stats. 2003 78th Leg. Sess. Ch. 1275, effective September 1, 2003 (renumbered from §263.405).

§ 81.191. Appeal

(a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1983, 68th Leg., p. 1116, ch. 255, § 1.
Acts 1987, 70th Leg., ch. 543, § 21.
Vernon's Ann.Civ.St. art. 4419b-1, § 8.24.

§ 81.192. Continuing Care Plan Before Discharge

The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1983, 68th Leg., p. 1116, ch. 255, § 1.
Acts 1987, 70th Leg., ch. 543, § 21.
Vernon's Ann.Civ.St. art. 4419b-1, § 8.32.

§ 81.193. Pass From Inpatient Care

(a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

Historical and Statutory Notes

Prior Laws:
Acts 1957, 55th Leg., p. 505, ch. 243, §§ 39, 53, 82.
Acts 1983, 68th Leg., p. 211, ch. 47, § 1.
Vernon's Ann.Civ.St. arts. 5547-39, 5547-53, 5547-56, 5547-82, 5561a, 5561b.

Library References

Mental Health ⇐43.
Westlaw Topic No. 257A.
C.J.S. Mechanics' Liens §§ 59, 63, 70.

Texts and Treatises

44 Texas Jur 3d, Incomp P § 93.

§ 574.070. Appeal

(a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 1991, 72nd Leg., ch. 76, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Prior Laws:
Acts 1957, 55th Leg., p. 505, ch. 243, §§ 54, 56, 57.
Acts 1963, 58th Leg., p. 1369, ch. 522, § 1.
Acts 1975, 64th Leg., p. 981, ch. 377, §§ 1 to 6.
Acts 1981, 67th Leg., p. 791, ch. 291, § 66.
Acts 1983, 68th Leg., p. 211, ch. 47, § 1.
Vernon's Ann.Civ.St. arts. 5547-54, 5547-56, 5547-57.

Law Review and Journal Commentaries

Appellate Practice and Procedure. Alan Wright, LaDawon H. Conway, Debra J. McComas, Heather D. Bailey, 54 SMU L.Rev. 1093 (2001).

Library References

Mental Health ⇐45.
Westlaw Topic No. 257A.
C.J.S. Mechanics' Liens §§ 74 to 79.

Texts and Treatises

44 Texas Jur 3d, Incomp P § 94.

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June 2, 2004

The Hon. Nathan Hecht
Texas Supreme Court
P. O. Box 12248
Austin, Texas 78711-2248

Dear Justice Hecht:

This letter is written to request your consideration of (1) a resolution for the different requirements found in the current rules of civil and appellate procedure regarding certificates of service and (2) deleting the requirement for a certificate of conference on motions for rehearing filed in the appellate courts. Both suggested changes would benefit the practioners and the appellate courts.

First, the current version of Texas Rule of Appellate Procedure 9.5(d) requires a certificate of service to state: (1) the date of service; (2) the method of service–hand delivery, mail, commercial delivery service, or fax, or combination of these methods; (3) the name of each person served; (4) the address of each person served; and (5) if the person served is a party's attorney, the name of the party represented by that attorney. Texas Rule of Civil Procedure 21a only requires a statement that the requirements of the rule have been met. If the two rules had the same requirements, we believe that fewer non-conforming documents would be presented to the appellate courts.

Secondly, we would respectfully request that the Supreme Court revisit Texas Rule of Appellate Procedure 10.1(a)(5) (certificates of conference on motions). In our experience, requiring a certificate of conference on a motion for rehearing is unnecessary and unproductive.

I am available to discuss these suggestions with you and can be reached at 832-814-2011.

Sincerely,

Sherry Radack

Sherry Radack
Chief Justice

MEMORANDUM

To: Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 6, 2004

Re: Appellate Rule Changes

At our last meeting, the Appellate Rules Subcommittee was requested to consider the following matters:

1. *Adoption of an Appellate Rule to implement the interim appeal provisions of Civil Practice and Remedies Code Section 51.014 (d)-(f).* In 2001, the 77th Texas Legislature adopted for Section 51.014 authorizing courts of appeals to "permit" an immediate interlocutory appeals of non-final orders (not otherwise immediately appealable) if a "district court" issues a written order for such an interlocutory appeal and the parties agree to the order. C.P.R.C. § 51.014 (d)-(f); *see Watson v. Moray*, 133 S.W.3d 877 (Tex.App.–Dallas 2004, no pet. n.) (dismissing appeal for want of jurisdiction because subsection (d)'s requirements not met); *See also Stolte v. County of Guadalupe*, ____ S.W.3d ____, 2004 Tex.App. LEXIS 4685 (Tex. App. - San Antonio 2004, no pet. h.); *In re D.B.*, 80 S.W.3d 698, 701 (Tex.App.–Dallas 2002, no pet.).

Section 51.014 (d)-(f) has no counterpart in the Texas Rules of Appellate Procedure showing how the court of appeals' permission should be requested.

A federal statute has long provided for a somewhat similar appeal of an interlocutory decision. *See* 28 U.S.C. § 1292 (b). In addition, Federal Appellate

Rule 5 prescribes a general rule for seeking permission to appeal from a federal court of appeals. When federal appellate review is discretionary. The Committee Note to the 1998 Amendment of Rule 5 provides that "[t]his new Rule 5 is intended to govern all discretionary appeals from district court orders, judgments, or decrees." A copy of Federal Appellate Rule 5 is attached for your consideration.

The Appellate Rules Subcommittee recommends adoption of a new Rule 26.2 implementing Civil Practice and Remedies Code Section 51.014 (d)-(f). A draft proposal of the proposed rule is attached as Attachment A.

2. *Revision of Appellate Rules dealing with accelerated and expedited appeals provided for by statute, particularly in cases involving termination of parental rights.* Appellate Rules 26 (Time to Perfect Appeal) 28 (Accelerated Appeals in Civil Cases) and 29 (Orders Pending Interlocutory Appeal in Civil Cases) all deal with so-called "accelerated" appeals, which are intended to proceed through the appellate process on a faster track than ordinary appeals, particularly ordinary appeals that operate under the extended-90 day perfection timetable that applies to most ordinary appeals.

At present, because of legislative enactments not referenced in the appellate rules which also provide for expedited appellate activity, the foregoing appellate rules create a trap for appellate counsel that requires attention. For example, Family Code Section 109.02(a) provides that:

> "An appeal in a suit in which termination of the parent-child relationship is in issue shall be given precedence over other civil cases and shall be accelerated by the appellate courts. The procedures for an accelerated appeal under the Texas Rules of Civil Procedure apply to an appeal in which the termination of the parent-child relationship is in issue."

In addition, Family Code Section 263.405 provides that "[a]n appeal of a final order rendered under [subchapter E (Final Order for Child Under Department Care) of Chapter 263 (Review of Placement of Children Under Care of Department of Protective and Regulatory Services)] is governed by the rules of the supreme court for accelerated appeals in civil cases and the procedures provided by this

section." Fam. C. § 263.405. Family Code Chapter 263 applies to cases in which termination of the parent-child relationship is sought by the Department of Protective and Regulatory Services. *See In re J.A.G.*, 92 S.W.3d 537, 539-540 (TexApp.–Amarillo2002, no pet) – appeal dismissed because notice of appeal was not filed within 20 days after termination order was signed; *In re T.W.*, 89 S.W.3d 641, 641-642 (Tex.App.–Amarillo 2002, no pet.) – same; *see also In re A.J.K.*, 116 S.W. 3d 165, 167-173 (Tex. App.–Houston [14th Dist.] 2003, no pet. h.) – accelerated appeal rules apply to cases brought by DPRS even if DPRS abandons request for termination. It also applies to cases in which the Department of Protective and Regulatory Services is appointed as a managing conservation without termination of parental rights Fam. C. § 263.404.

The subcommittee recommends that Appellate Rule 28 should be amended to reflect that in such cases, accelerated appeal procedures and other special statutory requirements must be satisfied. A copy of the proposed amendment is attached and included in Attachment B.

3. *Additional Amendment to Appellate Rule 29.* The original version of Appellate Rule 29.5 provided that during the pendency of "an appeal from an interlocutory order" a "trial court retains jurisdiction" and "may proceed with a trial on the merits." *See* former App. R. 29.5. As amended in 2002 to conform to the 2001 version of Civil Practice and Remedies Code § 51.014 (b), the words "if permitted by law" were added because the 2001 statute provided: "An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), shall have the effect of staying commencement of a trial in the trial court pending resolution of the appeal." *Id.* But in 2003, Section 51.014 (b) was amended further to provide that accelerated appeals of interlocutory orders under (a)(3), (a)(5) and (a)(8) stay "all other proceeding in the trial court pending resolution of that appeal." As a result, the subcommittee recommends that Appellate Rule 29 be amended again to conform to the 2003 amendments to Section 51.014 (b). A copy of the proposed amendment is attached and included in Attachment B.

4. Consideration of Chief Justice Radack's suggestions for certificates of service and certificates of conference on rehearing motions.

Attachment A

MEMORANDUM

To: Appellate Rules Subcommittee, Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 9, 2004 (Revised August 10, 2004)

Re: Appellate Rules Changes

As promised here is a draft of an Appellate Rule designed to implement the interim appeal provisions of Civil Practice and Remedies Code Section 51.014 (d)-(f). Additional draft rule changes will be sent by separate emails.

1. *Proposed Changes to Rule 25.* Change 25.1 (Civil Cases) to (Civil Cases-Appeal As of Right) and add the following language at the end of the first sentence "within the time allowed by Rule 26". *See* Fed. R. App. P. 3 (Appeal As of Right-How Taken) and Former Tex. R. App.P. 40 (Ordinary Appeal-How Perfected).

2. Add a new 25.2 (Civil Cases-Appeal By Permission).

3. Change 25.2 (Criminal Cases) to 25.3

4. Rule 25. Perfecting Appeal

25.1 Civil Cases – Appeal as of Right

a. *Notice of Appeal.* An appeal is perfected when a written notice of appeal is filed with the trial court clerk *within the time allowed by Rule 26.* If a notice of appeal *etc.*

b. *Petition for Permission to Appeal.* To request permission to appeal an interlocutory order that is not otherwise appealable as of right, a party must file a petition for permission to appeal not later than the 10th day after the date a district court signs a written order granting permission to appeal.

c. *Contents of Petition.* The petition must:

(1) identify the trial court and state the case's trial court number and style;

(2) give a complete list of all parties to the order complained of and the names and addresses of all trial and appellate counsel;

(3) identify the order granting permission to appeal by stating the date of the order and attaching to the petition a copy of the order stating the district court's permission to appeal or stating that the statutory conditions are met;

(4) identify the interlocutory order complained of by the appellant by stating the date of the order and attaching a copy of the order to the petition;

(5) state that all parties agree to the order granting permission to appeal;

(6) state the court of appeals to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the petition must state that the petition is addressed to either of those courts; and

(7) state concisely the issues or points presented, the facts necessary to understand the issues or points presented, the reasons why the appeal is authorized and should be allowed and the relief sought.

d. *Other papers.* If any party timely files a petition, another party may file a response or another petition not later than 7 days after the initial petition is served.

e. *Length of Petitions*. Except by the court's permission, a petition must not exceed 5 pages, exclusive of pages containing the identity of parties and counsel, any table of contents, any index of authorities, the issues presented, the signature and proof of service and the accompanying documents required to be attached to the petition.

f. *Grant of Petition; Fees; Filing the Record.*

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(a) request in writing that the official reporter prepare the reporter's record;

(b) notify the trial court clerk that permission to appeal has been granted and file any written designation specifying items to be included in the clerk's record; and

(c) pay any required fees.

(2) *A notice of appeal need not be filed.* The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The appellate record must be filed within 10 days after entry of the order granting permission to appeal.

COMMENT: This new Rule 25.2 is intended to govern discretionary appeals from trial court orders pursuant to Civil Practice and Remedies Code Section 51.014 (d)-(f).

Attachment B

MEMORANDUM

To: Appellate Rules Subcommittee, Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Date: August 9, 2004 (Revised August 10, 2004)

Re: Appellate Rules Changes

Here are my suggested revisions for Rules 12, 26, 28, and 29.

Rule 12. *Duties of Appellate Clerk*

Rule 12.1 *Docketing the Case.*

On receiving a copy of the notice of appeal, *the petition for permission to appeal*, the petition for review, the petition for discretionary proceeding, or a certified question, the appellate clerk must:

(a) . . .
(b) . . .
(c) docket for case

Etc.

Rule 26. *Time to Perfect Appeal.*

26.1 *Civil Cases.* The notice of appeal must be filed within 30 days after the judgment is signed, except as follows:

(a)

↓

(d) *in appeals with procedural requirements prescribed by specific statutes, within the time provided by statute.*

COMMENT to the 2004 Change: The Texas Legislature has enacted specific statutes providing expedited appellate timetables in certain cases. *See e.g.* Health & Safety C. § 81.191 – appeals from orders for management of persons with communicable diseases, notice of appeal must be filed within 10 days; Health & Safety C. § 574.070 – appeals from orders requiring mental health services, notice of appeal must be filed within 10 days. This change is to advise parties and their counsel to consult pertinent statutes which provide specific procedural requirements.

Rule 28. *Accelerated Appeals in Civil Cases.*

28.1 *Interlocutory Orders. ...*

28.2 *Quo Warranto.*

28.3 *Termination of Parental Rights.*

An appeal in a suit in which termination of parent-child relationship is in issue must be given precedence over other civil cases and the procedures for an accelerated appeal apply to any appeal in which termination of the parent-child relationship is in issue. An appeal from a final order appointing the Department of Protective and Regulatory Services as managing conservator without terminating parental rights is also governed by the rules for accelerated appeals in civil cases.

COMMENTS to 2004 change: New Rule 28.3 has been added to advise parties and their counsel that appeals from final judgments granting or denying termination of parental rights are accelerated appeals governed by the rules for accelerated appeals and by additional procedures provided by statute. *See* Fam. C. § 109.002; *see also* Fam. C. §§ 263.404; 263.405.

Rule 29.5 *Further Proceedings in Trial Court.* While appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case and *unless prohibited by statute* may make further orders, including one dissolving the order *complained of on appeal. If permitted by law, the trial court may proceed with a trial on the merits. But the court . . .*

COMMENT to 2004 change: Rule 29.5 is amended to conform to Sections 51.014 (b) and (c) of the Civil Practice and Remedies Code which provide complex procedures for staying proceedings in cases governed by Section 51.014 (a).

JUDGE TRACY CHRISTOPHER
295TH CIVIL DISTRICT COURT
301 FANNIN
HOUSTON, TEXAS 77002
(713) 755-5541

COP

April 27, 2004

Honorable Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711-2248

Re: Rule 223 of the Texas Rules of Civil Procedure

Dear Justice Hecht:

We currently have our individual juror lists in Harris County printed out by computer. With a push of a button, our computer will "shuffle" the names on the list and reprint a new jury list. Unfortunately such a shuffle does not comply with a literal reading of Rule 223.

We are also in the process in Harris County of scanning our juror information cards into a computer. Once that is done, we would also be able to shuffle the jury list and then rearrange the juror information cards in the computer for quick reprinting.

As you know, an old fashioned shuffle can take 45 minutes to an hour to complete. Our jurors wait patiently (or not) for the process to be completed. The computerized system will allow a shuffle to be completed much more quickly.

The judges in Harris County would like to request a change to the language of Rule 223 to allow for the computer shuffle. Thank you for considering this.

Tracy Christopher

Tracy Christopher

JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

Peter Vogel
Chair

June 28, 2004

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court of Texas
201 West 14th Street, Suite 104
Austin, Texas 78701

Re: Recommended Changes to the Texas Rules of Civil Procedure (TRCP) for Electronic Court Filing

Dear Chief Justice Phillips:

Attached for your consideration are the recommended changes to the Rules of Civil Procedure (TRCP) to incorporate electronic court filing. The recommended TRCP changes are consistent with the standard local rules template agreed by the Court in November 2002 and revised by the Court in June 2004.

These proposed changes to incorporate electronic court filing

a. Allow courts to order electronic filing on the motion of a party in a case (Rule 167),
b. Allow courts to order electronic service on the motion of a party in a case (Rule 167),
c. Allow judges to issue electronic orders (Rule 19a), and
d. Allow electronic service (Rule 21a).

JCIT greatly appreciates the Court's recent agreement to revise the standard local rules for use by Texas courts until the Texas Rules of Civil Procedure are amended.

If you have any questions or comments, please contact me at 214-999-4422 or Mike Griffith at 512-463-1641.

Respectfully submitted,

Peter Vogel
Chair, Judicial Committee on Information Technology

cc: The Honorable Nathan L. Hecht, Justice, Supreme Court of Texas
The Honorable Wallace B. Jefferson, Justice, Supreme Court of Texas

Proposed Additions and Amendments to the Texas Rules of Civil Procedure in order to Allow for the Electronic Filing (E-Filing) of Documents

June 2004

Rule 4. Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail, ~~or~~ by telephonic document transfer, or by electronic transmission, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

Rule 11. Agreements To Be in Writing

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record. A written agreement between attorneys or parties may be electronically filed only as a scanned image.

Rule 19a. Judge's Orders

A judge signs an order by applying his or her handwritten signature to a paper order or by applying his or her digitized signature to an electronic order. A digitized signature is a graphic image of the judge's handwritten signature.

Rule 21. Filing and Serving Pleadings and Motions

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefore, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application. In the case of a pleading, plea, motion or application that is electronically filed, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

Rule 21a. Methods of Service

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by electronic transmission to the recipient's e-mail address, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by electronic transmission to the recipient's e-mail address may only be effected where the recipient has agreed to receive electronic service or where the court has ordered the parties to electronically serve documents. Service by telephonic document transfer or by electronic transmission after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail, ~~or~~ by telephonic document transfer, or by electronic transmission, three days shall be added to the prescribed period. Notice may be served

by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. In the case of service by electronic transmission, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or other form of request. Every certification of service by electronic transmission must include the filer's e-mail address, the recipient's e-mail address and the date and time of service. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

Rule 45. Definition and System

Pleadings in the district and county courts shall

(a) be by petition and answer;

(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;

(c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense;

(d) be ~~in writing,~~ on paper or be electronically filed with the clerk by transmitting them through TexasOnline.

Paper pleadings shall ~~measuring~~ measure approximately 8½ inches by 11 inches, and shall be signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court. The use of recycled paper is strongly encouraged.

When a paper copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

Electronically-filed pleadings shall be formatted for printing on 8½ inch by 11 inch paper, and shall be signed by the party or his attorney in the manner specified by Rule 57.

All pleadings shall be construed so as to do substantial justice.

Rule 57. Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party represented by an attorney, the attorney's use of a confidential and unique identifier when filing the pleading constitutes the signature of the attorney whose name appears first in the pleading's signature block unless the pleading states that the use of the identifier constitutes the signature of a different attorney in the signature block. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party not represented by an attorney, the filer's use of a confidential and unique identifier when filing the pleading constitutes the signature of the party.

Rule 74. Filing With the Court Defined

The filing of pleadings, other ~~papers~~ documents, and exhibits as required by these rules shall be made by filing them with the clerk of the court~~,~~. A ~~except that the~~ judge may permit ~~the papers~~ paper documents to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. A judge may not accept electronically-transmitted documents for filing. This rule does not prohibit judges from accepting and considering pleadings submitted on electronic media during trial.

Rule 74a. When Electronically-Filed Document is Considered Filed

(a) Except as noted in part (c) of this rule, a person who electronically files a document is considered to have filed the document with the clerk at the time the filer electronically transmits the document to an electronic filing service provider (EFSP). A report of the electronic transmission of the document from the filer to the EFSP shall be prima facie evidence of the date and time of the transmission.

(b) When a clerk accepts an electronically-transmitted document for filing, the clerk shall place an electronic file mark on the front page of the document noting the date

and time the document was filed which, except as noted in part (c) of this rule, shall be the date and time that the filer electronically transmitted the document to an EFSP.

(c) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, an electronically-filed document that serves to commence a civil suit will not be considered to have been filed on Sunday when the document is electronically transmitted to an EFSP on Sunday. Rather, such a document will be considered to have been filed on the succeeding Monday.

Rule 74b. Documents That May Not be Electronically Filed

All documents that may be filed in paper form may be electronically filed with the exception of the following:

(a) documents in juvenile cases;
(b) documents in mental health cases;
(c) documents in proceedings under Chapter 33, Family Code;
(d) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
(e) bonds;
(f) wills or codicils thereto;
(g) subpoenas;
(h) affidavits of inability to afford court costs.

Rule 93. Certain Pleas to be Verified

(a) A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.

2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.

3. That there is another suit pending in this State between the same parties involving the same claim.

4. That there is a defect of parties, plaintiff or defendant.

5. A denial of partnership as alleged in any pleading as to any party to the suit.

6. That any party alleged in any pleading to be a corporation is not incorporated as alleged.

7. Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it states that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.

8. A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.

9. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

10. A denial of an account which is the foundation of the plaintiff's action, and supported by affidavit.

11. That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.

12. That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.

13. In the trial of any case appealed to the court from the Industrial Accident Board the following, if pleaded, shall be presumed to be true as pleaded and have been done and filed in legal time and manner unless denied by verified pleadings:

    (a) Notice of injury.
    (b) Claim for compensation.
    (c) Award of the Board.
    (d) Notice of intention not to abide by the award of the Board.
    (e) Filing of suit to set aside the award.

(f) That the insurance company alleged to have been the carrier of the workers' compensation insurance at the time of the alleged injury was in fact the carrier thereof.
(g) That there was good cause for not filing claim with the Industrial Accident Board within the one year period provided by statute.
(h) Wage rate.

A denial of any of the matters set forth in subdivisions (a) or (g) of paragraph 13 may be made on information and belief.

Any such denial may be made in original or amended pleadings; but if in amended pleadings the same must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them, must be proved.

14. That a party plaintiff or defendant is not doing business under an assumed name or trade name as alleged.

15. In the trial of any case brought against an automobile insurance company by an insured under the provisions of an insurance policy in force providing protection against uninsured motorists, an allegation that the insured has complied with all the terms of the policy as a condition precedent to bringing the suit shall be presumed to be true unless denied by verified pleadings which may be upon information and belief.

16. Any other matter required by statute to be pleaded under oath.

(b) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.

(c) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to promptly file the document in a traditional manner with the county clerk.

Rule 167. Orders Regarding Electronic Filing

Upon the motion of a party and for good cause shown, a court may order electronic filing and service of documents other than those documents that may not be electronically filed as set forth in Rule 74b.