AGENDA ITEM TWO:
REPORT FROM JUSTICE HECHT

- ***Copy of Order in Misc. Docket No. 04-9224 pertaining to rules amendments***
- ***Copy of Order in Misc. Docket No. 04-9226 pertaining to jury instructions under R226a***
- ***Copy of Order in Misc. Docket No. 04-9220 pertaining to referendum***

Lisa Hobbs

From: Elaine Carlson [ecarlson@houston.rr.com]
Sent: Monday, November 08, 2004 5:50 PM
To: Charles Babcock; Nathan L Hecht; Lisa. Hobbs
Subject: Amendments to Rule 292

The court's order (Misc. Docket No. 04-9224 and 04-9226) provides an effective date of February 1, 2004 applying to all cases filed on or after September 1, 2004. Shouldn't that apply to all cases filed on or after September 1, 2003?

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9224

**AMENDMENTS TO THE
TEXAS RULES OF CIVIL PROCEDURE AND THE
TEXAS RULES OF JUDICIAL ADMINISTRATION**

ORDERED that:

1. Rules 103, 173, 226a, 292, and 536(a) of the Texas Rules of Civil Procedure are amended as follows.

2. Rule 13.9 of the Texas Rules of Judicial Administration is amended as follows.

3. These amendments, with any changes made after public comments are received, take effect as follows:

a. for Rules 103, 173, 226a, and 536, on February 1, 2005, in all pending cases;

b. for Rule 292, on February 1, 2005, in all cases filed on or after September 1, 2004;

c. for Rule 13.9, on March 1, 2005, in all pending cases.

4. Comments appended to these rules are intended to inform their construction and application.

5. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

6. These amendments may be changed in response to comments received before January 15, 2005. Any interested party may submit comments in writing as follows:

by mail to: Ms. Lisa Hobbs, Rules Attorney
The Supreme Court of Texas
P.O. Box 12248
Austin TX 78711

by fax to: 512-463-1365
Attn: Ms. Lisa Hobbs, Rules Attorney

by email to: Lisa.Hobbs@courts.state.tx.us

SIGNED AND ENTERED this 7th day of October, 2004.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Priscilla R. Owen, Justice

Harriet O'Neill, Justice*

Steven Wayne Smith, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

* Not participating in the adoption of amendments to Rules 103 and 536(a), Texas Rules of Civil Procedure.

AMENDMENTS TO THE
TEXAS RULES OF CIVIL PROCEDURE

Rule 103. Who May Serve

Process — including c~~C~~itation and other notices, writs, orders, and other papers issued by the court — may be served anywhere by (1) any sheriff or constable or other person authorized by law ~~or~~, (2) ~~by~~ any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. ~~No person who is a party to or interested in the outcome of a suit shall serve any process.~~ Service by registered or certified mail and citation by publication ~~shall~~ must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process. The order authorizing a person to serve process may be made without written motion and no fee ~~shall~~ may be imposed for issuance of such order.

Comment – 2005

The rule is amended to clarify that it applies to service of all process and to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court.

Rule 173. Guardian Ad Litem

~~When a minor, lunatic, idiot or a non-compos mentis may be a defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as a part of the costs.~~

173.1 Appointment Governed by Statute or Other Rules

This rule does not apply to an appointment of a guardian ad litem governed by statute or other rules.

173.2 Appointment of Guardian ad Litem

(a) *When Appointment Required or Prohibited.* The court must appoint a guardian ad litem for a party represented by a next friend or guardian only if:

(1) the next friend or guardian appears to the court to have an interest adverse to the party, or

(2) the parties agree.

(b) *Appointment of the Same Person for Different Parties.* The court must appoint the same guardian ad litem for similarly situated parties unless the court finds that the appointment of different guardians ad litem is necessary.

173.3 Procedure

(a) *Motion Permitted But Not Required.* The court may appoint a guardian ad litem on the motion of any party or on its own initiative.

(b) *Written Order Required.* An appointment must be made by written order.

(c) *Objection.* Any party may object to the appointment of a guardian ad litem.

173.4 Role of Guardian ad Litem

(a) *Court Officer and Advisor.* A guardian ad litem acts as an officer and advisor to the court.

(b) *Determination of Adverse Interest.* A guardian ad litem must determine and advise the court whether a party's next friend or guardian has an interest adverse to the party.

(c) *When Settlement Proposed.* When an offer has been made to settle the claim of a party represented by a next friend or guardian, a guardian ad litem has the limited duty to determine and advise the court whether the settlement is in the party's best interest.

(d) *Participation in Litigation Limited.* A guardian ad litem:

(1) may participate in mediation or a similar proceeding to attempt to reach a settlement;

(2) must participate in any proceeding before the court whose purpose is to determine whether a party's next friend or guardian has an interest adverse to the party, or whether a settlement of the party's claim is in the party's best interest;

(3) must not participate in discovery, trial, or any other part of the litigation unless:

(A) further participation is necessary to protect the party's interest that is adverse to the next friend's or guardian's, and

(B) the participation is directed by the court in a written order stating sufficient reasons.

173.5 Communications Privileged

Communications between the guardian ad litem and the party, the next friend or guardian, or their attorney are privileged as if the guardian ad litem were the attorney for the party.

173.6 Compensation

(a) *Amount.* If a guardian ad litem requests compensation, he or she may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee for necessary services performed.

(b) *Procedure.* At the conclusion of the appointment, a guardian ad litem may file an application for compensation. The application must be verified and must detail the basis for the compensation requested. Unless all parties agree to the application, the court must conduct an evidentiary hearing to determine the total amount of fees and expenses that are reasonable and necessary. In making this determination, the court must not consider compensation as a percentage of any judgment or settlement.

(c) *Taxation as Costs.* The court may tax a guardian ad litem's compensation as costs of court.

(d) *Other Benefit Prohibited.* A guardian ad litem may not receive, directly or indirectly, anything of value in consideration of the appointment other than as provided by this rule.

Rule 173.7 Review

(a) *Right of Appeal.* Any party may seek mandamus review of an order appointing a guardian ad litem or directing a guardian ad litem's participation in the litigation. Any party and a guardian ad litem may appeal an order awarding the guardian ad litem compensation.

(b) *Severance.* On motion of the guardian ad litem or any party, the court must sever any order awarding a guardian ad litem compensation to create a final, appealable order.

(c) *No Affect on Finality of Settlement or Judgment.* Appellate proceedings to review an order pertaining to a guardian ad litem do not affect the finality of a settlement or judgment.

Comment — 2004

1. The rule is completely revised.

2. This rule does not apply when the procedures and purposes for appointment of guardians ad litem (as well as attorneys ad litem) are prescribed by statutes, such as the Family Code and the Probate Code, or by other rules, such as the Parental Notification Rules.

3. The rule contemplates that a guardian ad litem will be appointed when a party's next friend or guardian appears to have an interest adverse to the party because of the division of settlement proceeds. In those situations, the responsibility of the guardian ad litem as prescribed by the rule is very limited, and no reason exists for the guardian ad litem to participate in the conduct of the litigation in any other way or to review the discovery or the litigation file except to the limited extent that it may bear on the division of settlement proceeds. See *Jocson v. Crabb*, 133 S.W.3d 268 (Tex. 2004) (per curiam). A guardian ad litem may, of course, choose to review the file or attend proceedings when it is unnecessary, but the guardian ad litem may not be compensated for unnecessary expenses or services.

4. Only in extraordinary circumstances does the rule contemplate that a guardian ad litem will have a broader role. Even then, the role is limited to determining whether a party's next friend or guardian has an interest adverse to the party that should be considered by the court under Rule 44. In no event may a guardian ad litem supervise or supplant the next friend or undertake to represent the party while serving as guardian ad litem.

5. As an officer and advisor to the court, a guardian ad litem should have qualified judicial immunity.

6. Though an officer and adviser to the court, a guardian ad litem must not have *ex parte* communications with the court. See Tex. Code Jud. Conduct, Canon 3.

7. Because the role of guardian ad litem is limited in all but extraordinary situations, and any risk that might result from services performed is also limited, compensation, if any is sought, should ordinarily be limited.

8. A violation of this rule is subject to appropriate sanction.

Rule 226a. ~~Admonitory~~ Instructions to Jury Panel and Jury.

The court ~~shall~~ must give ~~such admonitory~~ instructions to the jury panel and ~~to~~ the jury as ~~may be~~ prescribed by order of the Supreme Court ~~in an order or orders entered for that purpose~~ under this rule.

Comment – 2005

The rule is clarified. With these amendments, the Supreme Court has ordered changes in the prescribed jury instructions consistent with Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as Tex. Civ. Prac. & Rem. Code § 41.003.

Rule 292. Verdict by Portion of Original Jury

(a) Except as provided in subsection (b), a~~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 finding liability for and the amount of exemplary damages.

Comment – 2005

The rule is divided into two subsections. Subsection (a) is clarified. Subsection (b) is added to make the rule consistent with Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as Tex. Civ. Prac. & Rem. Code § 41.003.

Rule 536. Who May Serve and Method of Service

(a) Process — including c~~C~~itation and other notices, writs, orders, and other papers issued by the court — may be served anywhere by (1) any sheriff or constable or other person authorized by law ~~or~~, (2) ~~by~~ any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. ~~No person who is a party to or interested in the outcome of a suit shall serve any process.~~ Service by registered or certified mail and citation by publication ~~shall~~ must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process. The order authorizing a person to serve process may be made without written motion and no fee ~~shall~~ may be imposed for issuance of such order.

(b) [No change.]

(c) [No Change.]

Comment – 2005

Subsection (a) is amended to clarify that it applies to service of all process and to include among the persons authorized to effect service those who meet certification requirements promulgated by the Supreme Court.

AMENDMENTS TO THE TEXAS RULES OF JUDICIAL ADMINISTRATION

13.9 Review.

(a) *MDL Panel Decision.* An o~~O~~rders of the MDL Panel, including ~~those~~ one granting or denying a motions for transfer, may be reviewed only by the Supreme Court in an original proceedings.

(b) *Orders by the Trial Court and Pretrial Court.* An o~~O~~rders ~~and~~ or judgments of the trial court ~~and~~ or pretrial court may be reviewed by the appellate court that regularly reviews orders of the court in which the case is pending at the time review is sought, irrespective of whether that court issued the order or judgment to be reviewed. A case involving such review may not be transferred for purposes of docket equalization among appellate courts.

(c) *Review Expedited.* An appellate court must expedite review of an order or judgment in a case pending in a pretrial court.

Comment – 2005

Subsection (b) is amended and subsection (c) is added to clarify the handling of appeals by appellate courts. Subsection (b) forbids transfer for docket equalization but not for other purposes that might arise. Subsection (c) does not require that an appeal from an order or judgment of a case pending in a pretrial court be treated as an accelerated appeal under the Texas Rules of Appellate Procedure if it would otherwise not be accelerated. Rather, subsection (c) requires expedited consideration by the appellate court regardless of whether review is sought by an appeal that is or is not accelerated, or by mandamus.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9226

AMENDMENTS TO JURY INSTRUCTIONS UNDER RULE 226a, TEXAS RULES OF CIVIL PROCEDURE

ORDERED that

1. To implement Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888, codified as Tex. Civ. Prac. & Rem. Code § 41.003, Part III of the jury instructions prescribed under Rule 226a, Texas Rules of Civil Procedure, by orders dated July 20, 1966 (effective January 1, 1967), July 21, 1970 (effective January 1, 1971), October 3, 1972 (effective February 1, 1973), December 5, 1983 (effective April 1, 1984), March 10, 1987 (effective January 1, 1988), December 16, 1987 (effective January 1, 1988), and January 28, 1988 (effective January 1, 1988), is amended as follows.

2. These amendments, with any changes made after public comments are received, take effect on February 1, 2005, in all cases filed on or after September 1, 2004.

3. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

4. These amendments may be changed in response to comments received before January 15, 2005. Any interested party may submit comments in writing as follows:

by mail to: Ms. Lisa Hobbs, Rules Attorney
The Supreme Court of Texas
P.O. Box 12248
Austin TX 78711

by fax to: 512-463-1365
Attn: Ms. Lisa Hobbs, Rules Attorney

by email to: Lisa.Hobbs@courts.state.tx.us

SIGNED AND ENTERED this 7th day of October, 2004.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Priscilla R. Owen, Justice

Harriet O'Neill, Justice

Steven Wayne Smith, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

AMENDMENTS TO PART III OF THE JURY INSTRUCTIONS PRESCRIBED UNDER RULE 226a, TEXAS RULES OF CIVIL PROCEDURE

[It is ordered . . .]

III.

COURT'S CHARGE

~~That~~ 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~~, shall be given by the court to the jury as part of the charge~~:

Ladies and Gentlemen of the Jury:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, y~~Y~~ou may ~~render your verdict~~ answer a question upon the vote of ten or more ~~members of the jury~~ jurors. ~~The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.~~ 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.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

(Definitions, questions and special instructions given to the jury will be transcribed here. If exemplary damages are sought against a defendant, the jury must unanimously find, with respect to that defendant, (i) liability on at least one claim for actual damages that will support an award of exemplary damages, (ii) any additional conduct, such as malice or gross negligence, required for an award of exemplary damages, and (iii) the amount of exemplary damages to be awarded. The jury's answers to questions regarding (ii) and (iii) must be conditioned on a unanimous finding regarding (i), except in an extraordinary circumstance when the conditioning instruction would be erroneous. The jury need not be unanimous in finding the amount of actual damages. Thus, if questions regarding (ii) and (iii) are submitted to the jury for defendants D1 and D2, instructions in substantially the following form must immediately precede such questions:

[Note: for ease of reading, the following examples, which are new, are not redlined.]

Preceding question (ii):

Answer Question _(ii)_ for D1 only if you unanimously answered "Yes" to Question[s] _(i)_ regarding D1. Otherwise, do not answer Question _(ii)_ for D1. [Repeat for D2.]

You are instructed that in order to answer "Yes" to [any part of] Question _(ii)_, your answer must be unanimous. You may answer "No" to [any part of] Question _(ii)_ only upon a vote of 10 or more jurors. Otherwise, you must not answer [that part of] Question _(ii)_.

Preceding question (iii):

Answer Question _(iii)_ for D1 only if you answered "Yes" to Question _(ii)_ for D1. Otherwise, do not answer Question _(iii)_ for D1. [Repeat for D2.]

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

These examples are given by way of illustration.)

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

_____

Judge Presiding

(The jury must certify to every answer in the verdict. The presiding juror may, on the jury's behalf, make the required certificate for any answers on which the jury is unanimous. For any answers on which the jury is not unanimous, the jurors who agree must each make the required certificate. If none of the jury's answers must be unanimous, the following certificate should be used:

[Note: For ease of reading, the following examples, which are partly new, are not redlined.]

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if the jury is unanimous.)

_____

Presiding Juror

_____

Printed Name of Presiding Juror

(To be signed by those rendering the verdict if the jury is not unanimous.)

Jurors' Signatures *Jurors' Printed Names*

[Insert the appropriate number of lines — 11 or 5 — for signatures and for printed names.]

If some of the jury's answers must be unanimous and others need not be, the court should obtain the required certificate in a clear and simple manner, which will depend on the nature of the charge. The court may consider using the following certificate at the end of the charge:

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that the jury was unanimous in answering the following questions:

Answer "All" or list answers: _____

_____

Presiding Juror

_____

Printed Name of Presiding Juror

(If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:)

We agree to the answers to the following questions:

List answers: _____

Jurors' Signatures *Jurors' Printed Names*

[Insert the appropriate number of lines — 11 or 5 — for signatures and for printed names.]

The court may also determine that a clearer way of obtaining the required certificate is to segregate the questions to which the jury's answers must be unanimous and request a certificate for each part of the charge.)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9220

APPROVAL OF REFERENDUM ON PROPOSED CHANGES IN THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

"Referral fees" — fees paid by one lawyer to another, not in the same firm, merely for referring or forwarding a case — have long been controversial. In response to substantial questions regarding the payment of referral fees in Texas, raised by the Supreme Court Task Force on Civil Litigation Improvements, chaired by Joseph D. Jamail of Houston,[1] the Supreme Court on October 9, 2003, proposed to amend the Texas Rules of Civil Procedure by adding Rule 8a effective January 1, 2004, and invited comments.[2]

The State Bar of Texas urged that the effective date of Rule 8a be postponed to allow further study of referral fees and advertising issues. The State Bar proposed to appoint a special task force with diverse representation that would conduct public hearings around the State and report to the State Bar Board of Directors by June 2004. The State Bar would then make recommendations to the Supreme Court in the fall of 2004. Based on the State Bar's proposal, the Supreme Court suspended the effective date of Rule 8a, stating: "If this process satisfactorily addresses the issues that have been raised, proposed Rule 8a will be withdrawn."[3]

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[1] Order Creating the Supreme Court Task Force on Civil Litigation Improvements, Misc. Docket No. 01-9149 (Aug.24, 2001). Members of the Task Force besides Mr. Jamail were Charles L. (Chip) Babcock of Dallas, Professor Elaine Carlson of Houston, Ricardo G. Cedillo of San Antonio, James E. Coleman of Dallas, Tommy Jacks of Austin, Dee Kelly of Fort Worth, Harry Reasoner of Houston, and Steve Susman of Houston.

[2] Order Adopting Amendments to the Texas Rules of Civil Procedure, Misc. Docket No. 03-9160 (Oct. 9, 2003).

[3] Order Suspending Proposed Rule 8a of the Texas Rules of Civil Procedure, Misc. Docket No. 03-9207 (Dec. 23, 2003), at 30 (per curiam).

The State Bar has fulfilled its commitments to this process. The State Bar Board of Directors established the Referral Fee Task Force in January 2003. The Task Force, chaired by Richard C. Hile of Austin,[4] conducted six public hearings and received numerous written comments. In its preliminary report, the Task Force concluded that Texas is the only jurisdiction whose attorney disciplinary rules expressly allow the payment of a fee merely for referring or forwarding a case and that almost all scholarly commentary, as well as the disciplinary rules of almost every other jurisdiction, condemn that practice. Accordingly, in its final report issued May 24, 2004, the Task Force proposed that Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct be amended to eliminate the "pure forwarding fee" and to clarify the obligations a Texas lawyer must assume before dividing a fee with another lawyer not in the same firm. The Task Force also recommended changes to Part VII of those rules, relating to attorney advertising. The State Bar Board of Directors approved these recommendations in public meetings on June 23 and September 17, 2004, and requested this Court to submit them to a referendum of the membership of the bar. The Board also approved the use of electronically transmitted ballots for online voting in the referendum.

Having studied the State Bar's recommendations, the Court has concluded that the amendments to the Texas Disciplinary Rules of Professional Conduct drafted and proposed by the State Bar should be submitted to a referendum of the membership of the bar using electronically transmitted ballots. The Court's approval of this referendum is not a predetermination of any legal issues regarding the proposed rules.

The Court also concludes that if the proposed amendments are approved, the Court's order adopting proposed Rule 8a of the Texas Rules of Civil Procedure should be withdrawn.

The Court continues to welcome written comment on the proposed amendments. Comments should be directed to Lisa Hobbs, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to her at Lisa.Hobbs@courts.state.tx.us.

In addition, any person may submit a brief on whether any of the amendments to Part VII are inconsistent with the free speech guarantees of the state and federal constitutions. A brief should contain this docket number and the caption: In re Petition of the State Bar of Texas for Order of

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[4] Members of the Task Force besides Mr. Hile were JoAl Cannon-Sheridan of Jacksonville, Alistair Dawson of Houston, Prof. Linda Eads of Dallas, Hon. David Evans of Fort Worth, Ygnacio Garza of Brownsville, John Hagan of Dallas, Hartley Hampton of Houston, Hugh Rice Kelly of Houston, Steven Laird of Fort Worth, Ron Lewis of Houston, Steve McConnico of Austin, Stephen Maxwell of Fort Worth, Lonny Morrison of Wichita Falls, Richard Pena of Austin, Prof. Robert Schuwerk of Houston, Hon. Kent Sullivan of Houston, and Hector Zavaleta of El Paso. Ex-officio members were State Bar President Betsy Whitaker, Chair of the Board Kim Askew, President-elect Kelly Frels, and Immediate Past President Guy Harrison.

Referendum. A brief must identify all persons on whose behalf it is submitted and disclose the source of any fee paid for the brief. A brief should not exceed 35 pages and should conform to the requirements of Rule 9.4 of the Texas Rules of Appellate Procedure, to the extent applicable. An original and eleven copies of a brief should be submitted to the Clerk of the Court, along with one copy in an electronic format on a standard optical or compact disk. The preferred electronic format is Adobe PDF, but WordPerfect and Microsoft Word are acceptable. Briefs must be received before 3:00 p.m., November 15, 2004. Responsive briefs must be received before 3:00 p.m., November 29, 2004. All briefs received will be posted on the Court's website as soon as practical.

IT IS THEREFORE ORDERED that:

1. The State Bar of Texas shall conduct a referendum of its members on the amendments it has proposed to the Texas Disciplinary Rules of Professional Conduct, which are attached to this Order.

2. The referendum shall be conducted as follows:

a. Electronic online voting on the State Bar website shall begin on November 5, 2004, at 12:01 a.m., and end on November 14, 2004, at 11:59 p.m.

b. On November 20, 2004, a written ballot shall be sent to each eligible member of the State Bar of Texas who did not vote electronically.

c. No ballot received by the State Bar after 5:00 p.m., December 20, 2004, shall be counted.

d. The ballot shall be substantially in the form attached.

2. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 1st day of October, 2004.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Priscilla R. Owen, Justice

Harriet O'Neill, Justice

Steven Wayne Smith, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

FORM OF BALLOT

State Bar of Texas
Rules Referendum 2004 Ballot

A. **Division of Fees:** Do you favor the proposed amendment, of Part I of the Texas Disciplinary Rules of Professional Conduct regarding division of fees, as published in the November 2004 issue of the Texas Bar Journal?

☐ **YES** ☐ **NO**

B. **Information of Legal Services:** Do you favor the proposed amendment, of Part VII of the Texas Disciplinary Rules of Professional Conduct regarding information about legal services, as published in the November 2004 issue of the Texas Bar Journal?

☐ **YES** ☐ **NO**

PROPOSED AMENDMENTS TO PART I
TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Rule 1.04 Fees

[No changes in (a)-(e).]

(f) A division or ~~agreement~~ arrangement for division of a fee between lawyers who are not in the same firm ~~shall not~~ may be made ~~unless~~ only if:

(1) the division is:

(i) in proportion to the professional services performed by each lawyer;

~~(ii) made with a forwarding lawyer;~~ or

(~~iii~~) made~~, by written agreement with the client, with a~~ between lawyers who assumes joint responsibility for the representation; and

(2) the client ~~is advised of, and does not object to, the participation of all the lawyers involved~~ consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including

(i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and

(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and

(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and

(3) the aggregate fee does not violate paragraph (a).

(g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that

results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (f). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:

(1) the reasonable value of legal services provided to that person; and

(2) the reasonable and necessary expenses actually incurred on behalf of that person.

(~~g~~h) Paragraph (f) of this ~~R~~rule does not ~~prohibit~~ apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof.

Comments:

[No changes in comments 1-9.]

Division of Fees

10. A division of fees is ~~a sharing of~~ a single billing to a client ~~between~~ covering the fee of two or more lawyers who are not in the same firm. A division of fees facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring or associating lawyer initially retained by the client and a trial specialist. ~~Because the association of additional counsel normally will result in a further disclosure of client confidences and have a financial impact on a client, advance disclosure of the existence of that proposed association and client consent generally are required. Where those consequences will not arise, however, disclosure is not mandated by this Rule. For example, if a lawyer hires a second lawyer for consultation and advice on a specialized aspect of a matter and that consultation will not necessitate the disclosure of confidential information and the hiring lawyer both absorbs the entire cost of the second lawyer's fees and assumes all responsibility for the advice ultimately given the client, a division of fees within the meaning of this Rule is not involved. See also Comment 3 to Rule 5.04.~~, but it applies in all cases in which two or more lawyers are representing a single client in the same matter, and without regard to whether litigation is involved. Paragraph (f) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes joint responsibility for the representation.

11. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (d) of this Rule.

1~~1~~2. ~~Paragraph (f) permits lawyers to divide a fee on one of three bases. The first is in proportion to the professional services performed by each. The second continues the Texas practice of permitting a division of fees with a forwarding attorney. The third permits fees to be divided with a lawyer who, by written agreement with the client, assumes joint responsibility for the representation. The second and the third methods permit the fees to be divided in any mutually agreeable proportion. If the third method is used, a lawyer may satisfy his or her obligations of "joint responsibility" for the representation either by being an attorney of record in the matter or by discharging the responsibilities imposed on a "supervised lawyer" under these rules. See Rule 5.02. Paragraph (f) does not require disclosure to the client of the share that each lawyer is to receive.~~ A division of a fee based on the proportion of services rendered by two or more lawyers contemplates that each lawyer is performing substantial legal services on behalf of the client with respect to the matter. In particular, it requires that each lawyer who participates in the fee have performed services beyond those involved in initially seeking to acquire and being engaged by the client. There must be a reasonable correlation between the amount or value of services rendered and responsibility assumed, and the share of the fee to be received. However, if each participating lawyer performs substantial legal services on behalf of the client, the agreed division should control even though the division is not directly proportional to actual work performed. If a division of fee is to be based on the proportion of services rendered, the arrangement may provide that the allocation not be made until the end of the representation. When the allocation is deferred until the end of the representation, the terms of the arrangement must include the basis by which the division will be made.

13. Joint responsibility for the representation entails ethical and perhaps financial responsibility for the representation. The ethical responsibility assumed requires that a referring or associating lawyer make reasonable efforts to assure adequacy of representation and to provide adequate client communication. Adequacy of representation requires that the referring or associating lawyer conduct a reasonable investigation of the client's legal matter and refer the matter to a lawyer whom the referring or associating lawyer reasonably believes is competent to handle it. See Rule 1.01. Adequate attorney-client communication requires that a referring or associating lawyer monitor the matter throughout the representation and ensure that the client is informed of those matters that come to that lawyer's attention and that a reasonable lawyer would believe the client should be aware. See Rule 1.03. Attending all depositions and hearings, or requiring that copies of all pleadings and correspondence be provided a referring or associating lawyer, is not necessary in order to meet the monitoring requirement proposed by this rule. These types of activities may increase the transactional costs, which ultimately the client will bear, and unless some benefit will be derived by the client, they should be avoided. The monitoring requirement is only that the

referring lawyer be reasonably informed of the matter, respond to client questions, and assist the handling lawyer when necessary. Any referral or association of other counsel should be made based solely on the client's best interest.

14. In the aggregate, the minimum activities that must be undertaken by referring or associating lawyers pursuant to an arrangement for a division of fees are substantially greater than those assumed by a lawyer who forwarded a matter to other counsel, undertook no ongoing obligations with respect to it, and yet received a portion of the handling lawyer's fee once the matter was concluded, as was permitted under the prior version of this rule. Whether such activities, or any additional activities that a lawyer might agree to undertake, suffice to make one lawyer participating in such an arrangement responsible for the professional misconduct of another lawyer who is participating in it and, if so, to what extent, are intended to be resolved by Texas Civil Practice and Remedies Code, ch. 33, or other applicable law.

15. A client must consent in writing to the terms of the arrangement prior to the time of the association or referral proposed. For this consent to be effective, the client must have been advised of at least the key features of that arrangement. Those essential terms, which are specified in subparagraph (f)(2), are 1) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, 2) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and 3) the share of the fee that each lawyer or law firm will receive or the basis on which the division will be made if the division is based on proportion of service performed. Consent by a client or prospective client to the referral to or association of other counsel, made prior to any actual such referral or association but without knowledge of the information specified in subparagraph (f)(2), does not constitute sufficient client confirmation within the meaning of this rule. The referring or associating lawyer or any other lawyer who employs another lawyer to assist in the representation has the primary duty to ensure full disclosure and compliance with this rule.

16. Paragraph (g) facilitates the enforcement of the requirements of paragraph (f). It does so by providing that agreements that authorize an attorney either to refer a person's case to another lawyer, or to associate other counsel in the handling of a client's case, and that actually result in such a referral or association with counsel in a different law firm from the one entering into the agreement, must be confirmed by an arrangement between the person and the lawyers involved that conforms to paragraph (f). As noted there, that arrangement must be presented to and agreed to by the person before the referral or association between the lawyers involved occurs. See subparagraph (f)(2). Because paragraph (g) refers to the party whose matter is involved as a "person" rather than as a "client," it is not possible to evade its requirements by having a referring lawyer not formally enter into an attorney-client relationship with the person involved before referring that person's

matter to other counsel. Paragraph (g) does provide, however, for recovery in quantum meruit in instances where its requirements are not met. See subparagraphs (g)(1) and (g)(2).

17. What should be done with any otherwise agreed-to fee that is forfeited in whole or in part due to a lawyer's failure to comply with paragraph (g) is not resolved by these rules.

18. Subparagraph (f)(3) requires that the aggregate fee charged to clients in connection with a given matter by all of the lawyers involved meet the standards of paragraph (a) — that is, not be unconscionable.

Fee Disputes and Determinations

1~~2~~9. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by a bar association, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, or when a class or a person is entitled to recover a reasonable attorney's fee as part of the measure of damages. All involved lawyers should comply with any prescribed procedures.

PROPOSED AMENDMENTS TO PART VII
TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

[N.B.: Comments in Article VII are not revised or omitted except as noted under Rule 7.02.)

Rule 7.01 Firm Names and Letterhead

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," ~~"PA,"~~ "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by ~~written~~ any communication under a trade or fictitious name, except that a lawyer who practices under a ~~trade~~ firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or ~~such written~~ communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Comment:

[No change.]

Rule 7.02 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(~~2~~3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(~~3~~4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(~~4~~5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; ~~or~~

(~~5~~6) designates one or more specific areas of practice in an advertisement in the public media or in a ~~written~~ solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or

(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(~~5~~6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(~~5~~6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or ~~writing~~ solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is

spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Comment:

1. The Rules within Part VII are intended to regulate communications made for the purpose of obtaining professional employment. They are not intended to affect other forms of speech by lawyers, such as political advertisements or political commentary, except insofar as a lawyer's effort to obtain employment is linked to a matter of current public debate.

2. This Rule governs all communications about a lawyer's services, including advertisements regulated by Rule 7.04 and solicitation communications regulated by Rules 7.03 and 7.05. Whatever means are used to make known a lawyer's services, statements about them ~~should~~ must be truthful and nondeceptive.

3. Sub-paragraph (a)(1) recognizes that statements can be misleading both by what they contain and what they leave out. Statements that are false or misleading for either reason are prohibited. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

4. ~~The prohibitions in s~~Sub-paragraphs (a)(2) ~~of~~ and (3) recognize that statements ~~that~~ may create ~~an~~ "unjustified expectations" ~~and in sub-paragraph (a)(3) of comparisons of lawyers' services unless those comparisons "can be substantiated by reference to verifiable objective data" are each designated to prevent lawyers from misleading members of the public as they seek legal services~~. For example, an advertisement that truthfully reports that a lawyer obtained a jury verdict of a certain amount on behalf of a client would nonetheless be misleading if it were to turn out that the verdict was overturned on appeal or later compromised for a substantially reduced amount, and the advertisement did not disclose such facts as well. Even an advertisement that fully and accurately reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Those ~~provisions~~ unique circumstances would ordinarily preclude advertisements in the public media and written solicitation communications that discuss the results obtained on behalf of a client, such as the amount of a damage award, the lawyer's record in obtaining favorable settlements or verdicts, as well as those that contain client endorsements. ~~Unless accompanied by appropriate, prominent qualifications and disclaimers, that information can~~

~~readily mislead prospective clients into believing that similar results can be obtained for them without reference to their specific factual and legal circumstances.~~

5. Sub-paragraph (a)(4) recognizes that comparisons of lawyers' services may also be misleading unless those comparisons "can be substantiated by reference to verifiable objective data." Similarly, an unsubstantiated comparison of a lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. ~~Similarly, s~~Statements comparing a lawyer's services with those of another where the comparisons are not susceptible of precise measurement or verification, such as "we are the toughest lawyers in town", "we will get money for you when other lawyers can't", or "we are the best law firm in Texas if you want a large recovery" can deceive or mislead prospective clients.

6. The inclusion of a disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client, but it will not necessarily do so. Unless any such qualifications and disclaimers are both sufficient and displayed with equal prominence to the information to which they pertain, that information can still readily mislead prospective clients into believing that similar results can be obtained for them without reference to their specific factual and legal circumstances. Consequently, in order not to be false, misleading, or deceptive, other of these Rules require that appropriate disclaimers or qualifying language must be presented in the same manner as the communication and with equal prominence. See Rules 7.04 (q) and 7.05(a) (2).

7. On the other hand, a simple statement of a lawyer's own qualifications devoid of comparisons to other lawyers does not pose the same risk of being misleading and ~~does not fall within this Rule~~ so does not violate sub-paragraph (a)(4). ~~See Rule 7.04~~ Similarly, a~~A~~ lawyer making a referral to another lawyer may~~, of course,~~ express a good faith subjective opinion regarding that other lawyer.

~~3~~8. Thus, this Rule does not prohibit communication of information concerning a lawyer's name or firm name, address and telephone numbers; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; names of references and with their consent, names of clients regularly represented; and other truthful information that might invite the attention of those seeking legal assistance. When a communication permitted by Rule 7.02 is made in the public media, the lawyer should consult Rule 7.04 for further guidance and restrictions. When a communication permitted by Rule 7.02 is made by a lawyer through a written solicitation, the lawyer should consult Rules 7.03 and 7.05 for further guidance and restrictions.

9. Sub-paragraph (a)(5) prohibits a lawyer from stating or implying that the lawyer has an ability to influence a tribunal, legislative body, or other public official through improper conduct or upon irrelevant grounds. Such conduct brings the profession into disrepute, even though the improper or irrelevant activities referred to are never carried out, and so are prohibited without regard to the lawyer's actual intent to engage in such activities.

Communication of Fields of Practice

~~4~~10. Paragraphs (a)(5~~6~~), (b) and (c) of Rule 7.02 regulate communications concerning a lawyer's fields of practice and should be construed together with Rule 7.04 or 7.05, as applicable. If a lawyer in a public media advertisement or in a written solicitation designates one or more specific areas of practice, that designation is at least an implicit representation that the lawyer is qualified in the areas designated. Accordingly, Rule 7.02(a)(5~~6~~) prohibits the designation of a field of practice unless the communicating lawyer is in fact competent in the area.

~~5~~11. Typically, one would expect competency to be measured by special education, training, or experience in the particular area of law designated. Because certification by the Texas Board of Legal Specialization involves special education, training, and experience, certification by the Texas Board of Legal Specialization conclusively establishes that a lawyer meets the requirements of Rule 7.02(a)(5~~6~~) in any area in which the Board has certified the lawyer. However, competency may be established by means other than certification by the Texas Board of Legal Specialization. See Rule 7.04(b).

~~6~~12. Lawyers who wish to advertise in the public media that they specialize should refer to Rule 7.04(a) , (b) and (c). Lawyers who wish to assert a specialty in a written solicitation should refer to Rule 7.05(a)(4) and (b)(1).

Actor Portrayal Of Clients

13. Sub-paragraph (a)(7) further protects prospective clients from false, misleading, or deceptive advertisements and solicitations by prohibiting the use of actors to portray clients of a lawyer or law firm. Other rules prohibit the use of actors to portray lawyers in the advertising or soliciting lawyer's firm. See Rules 7.04(g), 7.05(a). The truthfulness of such portrayals is extremely difficult to monitor, and almost inevitably they involve actors whose apparent physical and mental attributes differ in a number of material respects from those of the actual clients portrayed.

Communication in a Second Language

~~7~~14. The ability of lawyers to communicate in a second language can facilitate the delivery and receipt of legal services. Accordingly, it is in the best interest of the public that potential clients by made aware of a lawyer's language ability. A lawyer may state an ability to communicate in a second language without any further elaboration. However, if a lawyer chooses to communicate with potential clients in a second language, all statements or disclaimers required by the Texas Disciplinary Rules of Professional Conduct must also be made in that language. See paragraph (d). Communicating some information in one language while communicating the rest in another is potentially misleading if the recipient understands only one of the languages.

Rule 7.03 Prohibited Solicitations and Payments

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f), seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02(a); or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of ~~Article 320d, Revised Statutes~~ Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of ~~Article 320d, Revised Statutes~~ Occupational Code Title 5, Subtitle B, Chapter 952.

(f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Comment:

[No change.]

Rule 7.04 Advertisements in the Public Media

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of ~~Article 320d, Revised Statutes~~ Occupational Code

Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, [area of specialization] — Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified [area of specialization] [name of certifying organization]," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) ~~shall state with respect to each area advertised in which the lawyer has not been awarded a Certificate of Special Competence by the Texas Board of Legal~~

~~Specialization, "Not Certified by the Texas Board of Legal Specialization," however, if an area of law so advertised has not been designated as an area in which a lawyer may be awarded a Certificate of Special Competence by the Texas Board of Legal Specialization, the lawyer may also state, "No designation has been made by the Texas Board of Legal Specialization for a Certificate of Special Competence in this area."~~ shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement:

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously ~~with no abbreviations, changes, or additions in the quoted language set forth in paragraph (b) so as to be easily seen or~~ and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, ~~or~~ television, the internet, or electronic or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements ~~utilizing video or comparable visual images~~ in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised. ~~In advertisements utilizing audio recordings, any person who narrates an advertisement as if he or she were a lawyer whose services or whose firm's services are being advertised, shall be one or more of the lawyers whose services are being advertised.~~

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of ~~Article 320d, Revised Statutes~~ Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers, or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers, or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the internet must display the statements and disclosures required by Rule 7.04.

Comment:

[No change.]

Rule 7.05 Prohibited Written, Electronic, Or Digital Solicitations

(a) A lawyer shall not send, ~~or~~ deliver, or transmit, or knowingly permit or knowingly cause another person to send, ~~or~~ deliver, or transmit ~~on the lawyers behalf~~, a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (~~h~~g) through (~~o~~q) that would be applicable to the communication if it were an advertisement in the public media; or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (~~e~~f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) ~~shall conform to the provisions of Rule 7.04(a) through (c);~~

~~(2)~~ shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on ~~the~~ its first page~~, of the written communication~~ and on the face of the envelope ~~also shall be plainly marked "ADVERTISEMENT," however,~~ or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:

(i) in a color that contrasts sharply with the background color; and

(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger~~;~~.

(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;

(3) shall not be made to resemble legal pleadings or other legal documents;

(~~6~~4) shall not reveal on the envelope or other packaging or electronic mail subject line used ~~for~~ to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and

(~~7~~5) shall disclose how the lawyer obtained the information prompting ~~such written~~ the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT";

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement:

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(cd) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(de) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, ~~and~~ address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(ef) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(4) that is requested by the prospective client.

Comment:

[No change.]

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when ~~the lawyer knows or reasonably should know that the person who seeks the lawyer's services does so as a result of conduct prohibited by these rules~~ that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Comment:

[No change.]

Rule 7.07 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) Except as provided in paragraphs ~~(d)~~ (c) and (e) of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee of the State Bar of Texas, ~~either before or concurrently with~~ no later than the mailing or sending by any means,

including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

(1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed; ~~and~~

(2) a completed lawyer advertising and solicitation communication application form; and

(~~2~~3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (~~d~~e) of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee of the State Bar of Texas, ~~either before or concurrently with~~ no later than the first dissemination of an advertisement in the public media, a copy of each of ~~that~~ the lawyer's advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears ~~or is~~ or will ~~be disseminated~~ appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used; ~~and~~

(4) a completed lawyer advertising and solicitation communication application form: and

(~~4~~5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

(1) the intended initial access page of a website;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(~~c~~d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated ~~written~~ solicitation communication or advertisement may submit to the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) ~~of this Rule~~ or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. ~~An advisory opinion of the Lawyer Advertisement and Solicitation Review Committee~~ If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts, and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(d~~c~~) The filing requirements of paragraphs (a), ~~and~~ (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information~~, provided the information is not false or misleading~~:

(i) the name of ~~a~~the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";

(ii) the ~~fields~~ particular areas of law in which the lawyer or firm ~~advertises specialization and the statements required by Rule 7.04(a) through (c)~~ specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(i~~ii~~v) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(iv) technical and professional licenses granted by this state and other recognized licensing authorities;

(v~~i~~) foreign language ability;

(vi~~i~~) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii~~i~~) identification of prepaid or group legal service plans in which the lawyer participates;

(~~viii~~x) the acceptance or nonacceptance of credit cards;

(ix) any fee for initial consultation and fee schedule;

(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;

(xii) in the case of a website, links to other websites;

(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xiv) any disclosure or statement required by these rules; and

(xiiv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is ~~mailed~~ sent, delivered, or transmitted mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; ~~and~~ or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;

(6) a ~~written~~ solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(7) a ~~written~~ solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a ~~written~~ solicitation communication that is requested by the prospective client.

(~~c~~f) If requested by the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media ~~and/or written~~ solicitation communication by which the lawyer seeks paid professional employment.

Comment:

[No change.]

Friday November 12, 2004

Supreme Court Advisory Committee

Report of the Rule 523-734 Sub-committee on HB 4

Judge Tom Lawrence Sub-committee Chair

Legislative Intent

1. If the legislature intended that justice courts and small claims courts have a jury charge in cases involving exemplary damages, does it also intend that the courts give a full jury charge in any civil suit where there is a question of exemplary damages? Or is the jury charge to be partial, with a charge on the exemplary damages question only and no charge on any other aspect of the case?

2. I believe JP courts were not aware of this provision in HB4, or of the older provision in Section 41.012 CPRC, and if they had known would have made a concerted effort to have JP courts exempted from the jury charge provision. JPs will most likely try to get the justice courts exempted from the jury charge provision in the upcoming session. It is informative that Section 41.012 CPRC requiring a jury charge for exemplary damages has been the law since 1995 but as far as I know, JP courts have not followed that requirement, because of Rule 554, and no alarm has been raised.

3. The legislative history of House Bill 4 states that it is meant to address "root problems" of the court system, including non-meritorious lawsuits, a general increase in jury awards, and an increase in awards for non-economic damages. Many of the bill's provisions address the health care crisis. None of these are considered to be major problems in the justice or small claims courts. Damages above $5000 are almost never going to be awarded. The $5000 jurisdictional limit includes actual damages, compensatory damages, exemplary damages and attorney fees as part of the amount in controversy. The rationale for the jury charge for exemplary damages is not compelling in justice or small claims courts.

4. The Rules of Procedure prohibit a jury charge in justice court. The legislature, in Government Code Chapter 28, does not address the issue in small claims court. JPs typically follow most of the justice court rules for small claims court. If the legislature meant for there to be a jury charge in small claims court, presumably it would have amended the Government Code to provide for a charge in small claims court. Since the legislature has not amended Chapter 28 of the Government Code since 1995, presumably it did not intend that the Chapter 41 CPRC requirement for a jury charge for exemplary damages apply to small claims court. Nor did the legislature amend Chapter 28 in 2003 to require a jury charge requiring a unanimous verdict on the issue of exemplary damages.

Current Practices in JP Court

5. JP Courts try two different types of civil cases; justice court suits tried under the Rules of Evidence and Civil Procedure, and small claims court cases tried under Chapter 28 of the Government Code where the Rules of Evidence are not in effect.

6. TRCP 554: According to the Justice Court Deskbook, the judge may "instruct" the jury with regard to proper jury conduct, however, Rule 554 prohibits the justice from giving a charge to the jury in a civil case. Chapter 28 of the Government Code does not mention whether or not there is a jury charge in small claims suits. It says the jury is provided "as in other civil cases in justice court." Although this probably refers to the manner of summoning jurors, the practice in the JP courts is to apply the justice court rules for juries to small claims court. If the court is required to give a jury charge for the exemplary damages issue but is prohibited from giving a charge for any other matters relating to the jury trial isn't that going to be confusing?

7. Another argument against having a jury charge for exemplary damages in JP court is found when you look at TRCP 278 which provides that the jury charge is based on the written pleadings and the evidence. CPRC 41.012 says the court "shall instruct the jury with regard to Sections 41.001, 41.003, 41.010, and 41.011." Does Rule 278 apply to 41.012, in other words does a JP court have to provide a jury charge on the issue of exemplary damages if the pleadings do not raise the issue? If Rule 278 applies to 41.012, then a JP will not have to give a charge if the written pleadings and evidence do not raise the issue of exemplary damages. Rule 525 allows oral pleadings, and the Government Code only requires a statement of the claim be filed. Formal pleading rules do not apply. Consequently, in a justice court or small claims jury trial, the first time anyone may know the full basis of the plaintiff's claim is at the trial.

8. Who prepares the jury charge? The parties may be pro se and the judge may not have a clerk, so does the judge prepare the charge? Are the pro se parties or attorneys given a chance to object to the charge? Typically only about 5% (50 out of 1000) sitting JPs are attorneys.

9. When is the jury charge prepared? In justice court and small claims suits, as mentioned above, it may be during the middle of the trial before one knows if the plaintiff is requesting exemplary damages and if a charge is necessary.

10. Justice and small claims courts are not courts of record. If a case is appealed, the entire case, as well as anything having to do with the jury charge, will be tried on a "trial de novo" basis at the county court. It is the general practice among county courts to allow a jury charge on the de novo trial of JP court appeals, so any problems would be corrected on appeal to county court.

Conclusions and Recommendations

11. TRCP 277, 278, & 279 and case law require that a jury charge track the language of the statute or regulation and/or contain the elements of the cause of action. Under Chapter 41 CPRC, if the court has to give a charge on exemplary damages, does it also have to include a charge on the elements necessary to sustain the grounds for recovery? The jury charge on the elements currently would be prohibited under Rule 554, so wouldn't it be confusing to give the jury a charge on part of the issue but not on another part of the issue?

12. There is a movement in the legislature to raise the civil jurisdictional limit of the JP courts to $10,000. If that happens, perhaps some sort of a general "modified charge" for JP courts might be necessary, and the SCAC can look at that next fall.

13. Attached is a sample jury charge, which may address the requirements of Sections 41.012 and 41.003, but would solve none of the other problems raised in this memo. Also attached is a sample Jury Verdict Form which could be used in JP court jury trials and which would allow compliance with the HB 4 provision that verdicts awarding exemplary damages be unanimous, and with Rule 554 that the JP not charge the jury.

14. Lastly, I would point out that the question of exemplary damages is not raised very often in the JP courts, and to institute a new and potentially confusing requirement such as this will cause many problems with little benefit. The best recommendation is to make no changes relating to implementing an exemplary damages jury charge and allow it to be addressed in the next legislative session and if it is not resolved then the SCAC can revisit it next fall. Providing the revised Jury Verdict Form will allow compliance with the legislature's requirement that jury verdicts on exemplary damages be unanimous. The form can be quickly distributed by the Justice Court Training Center with appropriate instructions.

RELEVENT EXCERPTS FROM TEXAS RULES OF COURT

TRCP 525 ORAL PLEADINGS

The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket; provided that after a case has been appealed and is docketed in the county (or district) court all pleadings shall be reduced to writing.

Knight v. Department of Pub. Safety, 361 S.W.2d 620,623 (Tex.App.--Amarillo 1962, no writ). An "appeal from the administrative body shall be tried in the same manner as a trial in the county court on an appeal from the justice court. [TRCP 525] provides that in an appeal from the justice court to county court all pleadings in a cause which are not already written shall be reduced to writing."

TRCP 554 JUSTICE SHALL NOT CHARGE JURY

The justice of the peace shall not charge the jury in any cause tried in his court before a jury.

GOVERNMENT CODE

CHAPTER 28. SMALL CLAIMS COURTS

SUBCHAPTER A. GENERAL PROVISIONS

§ 28.001. SMALL CLAIMS COURT. In each county, there is a court of inferior jurisdiction known as the small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.002. JUDGE. Each justice of the peace sits as judge of the small claims court and exercises the jurisdiction provided by this chapter.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.003. JURISDICTION. (a) The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed $5,000.

(b) An action may not be brought in small claims court by:

(1) an assignee of the claim or other person seeking to bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest; or

(3) a collection agency or collection agent.

(c) A person may be represented by an attorney in small claims court.

(d) This section does not prevent a legal heir from bringing an action on a claim or account otherwise within the jurisdiction of the court.

(e) A corporation need not be represented by an attorney in small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 3, eff. June 20, 1987; Acts 1989, 71st Leg., ch. 501, § 1, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 802, § 4, 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 776, § 4, eff. Sept. 1, 1991.

§ 28.004. FEES. Fees in small claims court are, except as provided by Subchapter E, Chapter 118, Local Government Code,

the same as those for cases in justice courts.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 974, § 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1, § 19(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 2, § 8.26, eff. Aug. 28, 1989.

§ 28.005. SUPPLIES. The commissioners court shall furnish to the justices of the peace a reasonable number of blank forms, docket books, and other supplies necessary for the small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.006. SMALL CLAIMS COURT SEAL. (a) The commissioners court shall furnish to each judge of a small claims court a seal that has a star with five points in the center. The seal must also have "Small Claims Court, _____ County, Texas" and any applicable precinct number on it.

(b) The seal may be attached to all process other than subpoenas issued out of the small claims court and may be used to authenticate the official acts of the clerk and the judge of the small claims court.

(c) The seal may be affixed by a seal press or stamp that embosses or prints the seal.

Added by Acts 1991, 72nd Leg., ch. 747, § 2, eff. Sept. 1, 1991.

SUBCHAPTER B. INSTITUTION OF CLAIM

§ 28.011. VENUE. An action in small claims court must be brought in the county and precinct in which the defendant resides, except that:

(1) an action on an obligation that the defendant has contracted to perform in a certain county may be brought in that county; and

(2) an action for which venue is proper under Section 15.099, Civil Practice and Remedies Code, may be brought as provided by that section.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1985, 69th Leg., ch. 480, § 25, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 148, § 2.31, eff. Sept. 1, 1987.

§ 28.012. INSTITUTION OF ACTION. (a) To institute an action in small claims court, the claimant, attorney for the

claimant, or authorized agent of the claimant must:

(1) appear before the judge or the clerk of the court and file a statement of the claim under oath; or

(2) file a sworn statement of the claim with the judge or clerk of the court.

(b) The statement must be in substantially the following form:

In the Small Claims Court of _____ County, Texas

A. B., Plaintiff

vs.

C. D., Defendant

State of Texas

County of _____

A. B., whose post office address is _____(Street and Number), _____(City), _____ County, Texas, being duly sworn, on his oath deposes and says that C. D., whose post office address is _____(Street and Number), _____(City), _____ County, Texas, is justly indebted to him in the sum of _____ Dollars and _____ Cents ($_____), for _____ _____ _____

(here the nature of the claim should be stated in concise form and without technicality, including all pertinent dates), and that there are no counterclaims existing in favor of the defendant and against the plaintiff, except _____

_____
Plaintiff

Subscribed and sworn to before me this ___day of ____, 19___.

_____
Judge

By:_____
Clerk

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 4, eff. June 20, 1987; Acts 1989, 71st Leg., ch. 802, § 6, eff. Sept. 1, 1989.

§ 28.013. CITATION. (a) On filing the statement and payment of the filing fee, the judge or clerk shall issue process in the manner provided for a case in justice court.

(b) Citation is served by an officer of the state authorized to serve other citations.

(c) Citation may be served in any manner authorized for service of citation in a district court, county court, or justice

court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 7, eff. Sept. 1, 1989.

§ 28.014. MOTION TO TRANSFER VENUE. The defendant may file a written motion to transfer venue as provided by the rules governing justice courts. The final ruling of the judge on the plea is interlocutory and may be appealed only with an appeal of the final judgment.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 8, eff. Sept. 1, 1989.

SUBCHAPTER C. HEARING

§ 28.031. FAILURE TO APPEAR. (a) If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge shall enter a default judgment for the plaintiff in the amount proved to be due. The judge may set aside the default judgment if, not later than the 10th day after the default judgment is signed, the defendant files with the court a written motion showing good cause for setting aside the judgment.

(b) If the plaintiff does not appear, the judge may enter an order dismissing the action without prejudice. The judge may set the case for trial if, not later than the 10th day after the judge dismisses the action, the plaintiff files with the court a written motion showing good cause to set aside the dismissal.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 9, eff. Sept. 1, 1989.

§ 28.032. POSTPONEMENT. The judge may grant a postponement or continuance only for good cause shown.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.033. HEARING. (a) If both parties appear, the judge shall proceed to hear the case.

(b) Formal pleading other than the statement is not required.

(c) The judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered.

(d) The hearing is informal, with the sole objective being to dispense speedy justice between the parties.

(e) Reasonable discovery in small claims court shall be permitted. Discovery is limited to that considered appropriate and permitted by the judge.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 10, eff. Sept. 1, 1989.

§ 28.034. DUTY OF JUDGE TO DEVELOP CASE. The judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.035. JURY TRIAL. (a) A party is entitled to a jury trial if the requesting party files a request with the court not later than one day before the date on which the hearing is to be held and at the same time pays the jury fee to the judge.

(b) The jury is provided as in other civil cases in justice court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

SUBCHAPTER D. JUDGMENT; APPEAL; EXECUTION

§ 28.051. JUDGMENT. (a) On conclusion of the hearing, the judge shall render judgment as the justice of the case requires.

(b) If the judgment is against the defendant, the defendant shall pay the judgment immediately.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.052. RIGHT TO APPEAL. (a) If the amount in controversy, exclusive of costs, exceeds $20, a dissatisfied party may appeal the final judgment to the county court or county court at law.

(b) Appeal is in the manner provided by law for appeal from justice court to county court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.053. HEARING ON APPEAL. (a) The county court or county court at law shall dispose of small claims appeals with all convenient speed.

(b) Trial on appeal is de novo. No further pleadings are required and the procedure is the same as in small claims court.

(c) All costs not previously paid by the parties accrue until judgment is rendered on the appeal.

(d) Judgment of the county court or county court at law on the appeal is final.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.054. ENFORCEMENT OF JUDGMENT. If the defendant fails to make immediate payment on the judgment, the judgment may be enforced as in justice court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 5, eff. June 20, 1987.

§ 28.055. JUDGMENT NOT CLAIMED BY PLAINTIFF. (a) If a defendant has not paid a judgment in favor of the plaintiff and the plaintiff's whereabouts are unknown, the defendant shall use due diligence to locate the plaintiff. The defendant must send a letter by registered or certified mail, return receipt requested, to the plaintiff's last known address and to the address appearing in the plaintiff's statement of his claim or other court record.

(b) If the plaintiff is not located after the use of due diligence, the defendant may pay to the court the amount owed under the judgment. The judge shall immediately execute a release of the judgment on behalf of the plaintiff and deliver the release to the defendant.

(c) The amount paid to the court is held in trust for the plaintiff, and at least once a month the court shall pay those trust funds to the county clerk. The clerk shall deposit the trust funds in the county clerk's trust fund account in the county treasury. The funds shall be deposited, and may be withdrawn, in the same manner as trust funds deposited in district or county court to abide the result of a legal proceeding.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

of action is insufficient to raise an issue of fact. [*ITT Consumer Financial Corp. v. Tovar*, 932 S.W. 2d 147, 159 (Tex. App. – El Paso, 1996, writ denied).]

❒ In either case, the movant has the burden of proof on the motion.

Courts have frequently held that to succeed on a "no evidence" motion the movant must show there was not even a mere scintilla or glimmer of evidence. In the "established as a matter of law" motion, the movant must meet the burden of proof on the elements of the claim. [*Wicker, Texas Practice: Civil Trial and Appellate Procedure*, Vol. 30 § 52]

❒ 5. A party may move for, or the court on its own motion may grant, a directed verdict after the opposing party rests or closes or after all the evidence has been presented.

The court would be safe to decline a motion for direct verdict against a party until that party has had a chance to present its evidence.

❒ 6. If a motion for directed verdict is not granted at one stage, another such motion may still be considered and granted at the court's discretion, at a succeeding stage.

The movant does not waive the right to put on evidence, if the motion fails. [*Wicker, Texas Practice Civil Trial and Appellate Procedure*, Vol. 30 § 53; *Eberstadt v. State*, 45 S.W. 1007, 1008 (Tex. 1898).]

D. Submitting Case to Jury

❒ 1. In justice court, the judge may "instruct" the jury with regard to proper jury conduct; however, a rule of procedure prohibits the justice from giving a charge to the jury in a civil case. [Rule 554, T.R.C.P.]

In district court and county court, after the parties have completed the presentation of evidence and before argument to the jury, the court prepares and delivers to the jury a charge which instructs the jury on the law applicable to the

case and which may submit the issues of fact in the case for the jury to answer. [Rules 217, 272, 275, T.R.C.P.]

❒ 2. The jury in justice court is the judge of the law and the facts. [*Hedrick v. McLaughlin*, 214 S.W. 985, 986 (Tex. Civ. App. – Amarillo 1919, no writ).

❒ 3. The jury may decide the case in the courtroom or retire to some other place for deliberation.

If the jury retires from the courtroom, they must be kept together in some convenient place under the charge of an officer until they agree on a verdict or are discharged by the court.

- ❒ The court may permit the jurors to separate temporarily for the night and at meals and for other purposes. [Rule 282, T.R.C.P.]

- ❒ The jury may take with them any written evidence admitted during the trial, except any depositions of witnesses. [Rule 281, T.R.C.P.]

❒ 4. The jurors shall appoint one of their number to serve as presiding juror. [Rule 282, T.R.C.P.]

❒ 5. The jury may communicate with the judge through the officer in charge of them.

❒ 6. If the jury has a question or needs further instructions, the officer must inform the court; the jury may then, in open court and through the presiding juror, communicate with the court either orally or in writing. [Rule 285, T.R.C.P.]

- ❒ During their deliberations, the jury must not communicate with anyone else about the case and shall be so instructed by the court. [Rules 283, 284, T.R.C.P.]

❒ 7. A jury shall be discharged if it fails to agree to a verdict after being kept together for a reasonable time.

- ❒ If there is time left on the same day, the judge may impanel another jury to try the

to matters or issues that are undisputed,[82] immaterial,[83] or unsupported by evidence.[84] On the contrary, an instruction is erroneous if it ignores or excludes pleaded issues or defenses that are supported by evidence.[85] Rights in this respect must be determined

from court as to what acts would constitute valid and binding ratification. Chapman v Guaranty State Bank (1927, CA) 297 SW 545, writ ref.

82. Pecos & N. T. R. Co. v Meyer (1913, CA) 155 SW 309, writ ref.

83. Kansas C., M. & O. R. Co. v Starr (1917, CA) 194 SW 637, writ ref.

84. Ward v Wheeler (1857) 18 Tex 249.

Where fact is shown so conclusively that court can assume it as matter of law, it is not error to refuse to submit it. Kansas City S. R. Co. v Rosebrook-Josey Grain Co. (1908) 52 CA 156, 114 SW 436 (fact that appellant was common carrier).

Court was not justified in submitting issue as to condition of shipment on its arrival where evidence clearly showed that shipment was in good condition when received by carrier and in damaged condition on its arrival at destination. Galveston, H. & S. A. R. Co. v Tullis (1928, CA) 8 SW2d 247, writ dism w o j.

85. Horn v Western Union Tel. Co. (1917) 109 Tex 229, 194 SW 386, on reh 109 Tex 234, 205 SW 831; Panhandle & S. F. R. Co. v Kornegay (1921, Com) 227 SW 1100; Texas & N. O. R. Co. v Harrington (1921, Com) 235 SW 188; Pearson v Texas & N. O. R. Co. (1922, Com) 238 SW 1108; Texas E. R. Co. v Jones (1922, Com) 243 SW 980; El Paso & S. W. R. Co. v Lovick (1919, CA) 210 SW 283, affd 110 Tex 244, 218 SW 489, error dismd 254 US 659, 65 L Ed 462, 41 S Ct 6; Thomas v Corbett (1919, CA) 211 SW 806; Schaff v Hollin (1919, CA) 213 SW 279, writ ref; Chicago, R. I. & G. R. Co. v Wentzel (1919, CA) 214 SW 710; Chicago, R. I. & G. R. Co. v Shockley (1919, CA) 214 SW 716; Long v Calloway (1920, CA) 220 SW 414; Thornhill v Kansas C., M. & O. R. Co. (1920, CA) 223 SW 490, writ ref; Jefferson & N. W. R. Co. v Blair (1920, CA) 224 SW 546, writ dism w o j; Cass v Green (1920, CA) 224 SW 938; American Nat. Ins. Co. v Allen (1920, CA) 226 SW 823; Haverbekken v Johnson (1921, CA) 228 SW 256; Eastern Texas Electric Co. v Kappe (1921, CA) 235 SW 253, writ ref; Wichita Falls, R. & F. W. R. Co. v Mendoza (1922, CA) 240 SW 570; Robins v Connolly (1922, CA) 241 SW 244; Thomason v Hawley (1922, CA) 242 SW 521, writ ref; Thomason v Powers (1922, CA) 242 SW 525, writ ref; Wichita V. R. Co. v Meyers (1922, CA) 248 SW 444; Texas E. Ry. v Worthy (1923, CA) 250 SW 710, writ dism w o j; St. Louis S. R. Co. v Austin (1923, CA) 254 SW 519; Farmers' State Bank & Trust Co. v Gorman Home Refinery (1925, CA) 273 SW 694, affd (Com) 3 SW2d 65; Rutland v St. Louis, S. F. & T. R. Co. (1925, CA) 274 SW 284, affd (Com) 292 SW 182; Barton v Lary (1926, CA) 283 SW 920; Dismukes v Gilmer (1926, CA) 286 SW 495; Burson v First Nat. Bank (1927, CA) 299 SW 927; Texas Electric Service Co. v Kinkead (1931, CA) 36 SW2d 1052, writ ref; McCrea v Underwood (1934, CA) 73 SW2d 593.

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in the light of conditions as they exist when the charge is given,[86] not after the verdict has been returned.[87]

A justice of the peace, on the other hand, is prohibited from charging the jury.[88] This prohibition does not embrace cases in the county court, so that the county court is not precluded from giving a charge in a case appealed from a justice's court.[89]

§ 107. —Right to submission of questions

The court must, under the Rules of Civil Procedure, submit the cause on broad form questions whenever feasible. Under the former version of this rule, the court was required to submit a case on special issues on the request of a party, unless the nature of the suit was such that it could not be determined in this way, or unless good cause was shown for submission on a general charge.[90] But where no request had been interposed, the court could exercise discretion regarding submission of a cause on special issues.[91]

86. Burnett v Rutledge (1955, CA Amarillo) 284 SW2d 944, writ ref n r e; Pacific Finance Corp. v Donald (1955, CA Beaumont) 286 SW2d 260.

Charge must be viewed as of time it was prepared. Atchison, T. & S. F. R. Co. v Acosta (1968, CA Houston (1st Dist)) 435 SW2d 539, writ ref n r e.

87. State v Schlick (1944) 142 Tex 410, 179 SW2d 246; Sam v Sullivan (1945, CA) 189 SW2d 69, writ ref w o m; Southwestern Greyhound Lines, Inc. v Dickson (1949, CA) 219 SW2d 592; Coffey v Ft. Worth & D. R. Co. (1955, CA Eastland) 285 SW2d 453.

Right of plaintiff, under former law, to submission of issue of discovered peril was not affected by finding of jury that plaintiff's injury was result of unavoidable accident. Rogers v Cotton (1931, CA) 42 SW2d 173, writ dism w o j.

88. RCP Rule 554 (providing that justice of peace may not charge jury in any cause tried in his or her court before jury).

It is apparent from several statutes that it was intention of legislature that in justice court jury should be judge of law as well as of facts. Hedrick v McLaughlin (1919, CA) 214 SW 985.

89. Hedrick v McLaughlin (1919, CA) 214 SW 985.

90. See § 103.

91. Padgett v Hines (1917, CA) 192 SW 1122, writ dism w o j; Penelope Real Estate Co. v Dawson (1918, CA) 206 SW 702; Ellis v Haynes (1919, CA) 216 SW 249; Oliver v Forney Cotton Oil & Ginning Co. (1921, CA) 226 SW 1094.

Federal practice, including Fed RCP Rule 49 does not require federal court, as matter of law, to submit special issues of fact to jury, and court may,

Cause No. _____

JURY CHARGE

EXEMPLARY DAMAGES

_____ IN THE JUSTICE COURT
Plaintiff
vs. HARRIS COUNTY, TEXAS
_____
Defendant PRECINCT 4, POSITION 2

MEMBERS OF THE JURY:

YOU, THE JURY, AS THE TRIER OF FACT, MUST MAKE THE DETERMINATION WHETHER TO AWARD EXEMPLARY DAMAGES, AND THE AMOUNT OF EXEMPLARY DAMAGES TO AWARD.

BEFORE YOU MAKE AN AWARD OF EXEMPLARY DAMAGES, YOU SHALL CONSIDER THE FOLLOWING DEFINITIONS AND PURPOSES OF EXEMPLARY DAMAGES.

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross- claimant, or third-party plaintiff, seeking recovery of damages. In a cause of action in which a party seeks recovery of damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief.

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or pecuniary loss; the term does not include exemplary damages or noneconomic damages.

(5) "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 noneconomic damages. "Exemplary damages" includes punitive damages.

(6) "Fraud" means fraud other than constructive fraud.

(7) "Malice" means a specific intent by the defendant to cause substantial injury or harm to the claimant.

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "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.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from any of the following:

(1) fraud; (2) malice; or (3) gross negligence.

The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by law. This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

Exemplary damages may also be awarded if the claimant relies on a statute establishing a cause of action authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state. In this situation, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state.

In determining the amount of exemplary damages, you, the Jury, shall consider evidence, if any, relating to:

(1) the nature of the wrong;
(2) the character of the conduct involved;
(3) the degree of culpability of the wrongdoer;
(4) the situation and sensibilities of the parties concerned;
(5) the extent to which such conduct offends a public sense of justice and propriety; and
(6) the net worth of the defendant.

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.

_____

JUDGE TOM LAWRENCE

Case Number: _____

_____	§	In the Justice Court
Plaintiff	§	
vs.	§	Harris County, Texas
_____	§	
Defendant	§	Precinct __, Place __

VERDICT FOR THE PLAINTIFF

We, the Jury, find the Plaintiff, _____ , do have and recover of the Defendant, _____ the sum of $_____Dollars in compensatory damages, $_____ Dollars in exemplary damages, attorney's fees of $_____ Dollars, together with court costs of $_____ Dollars.

_____
(Presiding Juror)

**AT LEAST 5 OUT OF 6 JURORS MUST AGREE ON THE VERDICT FOR COMPENSATORY DAMAGES, ATTORNEY'S FEES, AND COURT COSTS. THE JURORS MUST SIGN BELOW:

_____

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**ALL 6 JURORS MUST AGREE TO AWARD EXEMPLARY DAMAGES, AND THE AMOUNT OF DAMAGES TO AWARD. THE JURORS MUST SIGN BELOW:

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201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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

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.

H.B. No. 4

AN ACT

relating to reform of certain procedures and remedies in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CLASS ACTIONS

SECTION 1.01. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 26 to read as follows:

CHAPTER 26. CLASS ACTIONS

SUBCHAPTER A. SUPREME COURT RULES

Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) The supreme court shall adopt rules to provide for the fair and efficient resolution of class actions.

(b) The supreme court shall adopt rules under this chapter on or before December 31, 2003.

Sec. 26.002. MANDATORY GUIDELINES. Rules adopted under Section 26.001 must comply with the mandatory guidelines established by this chapter.

Sec. 26.003. ATTORNEY'S FEES. (a) If an award of attorney's fees is available under applicable substantive law, the rules adopted under this chapter must provide that the trial court shall use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel. The rules may give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method by no more than four times based on specified factors.

(b) Rules adopted under this chapter must provide that in a class action, if any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney's fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.

[Sections 26.004-26.050 reserved for expansion]

SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION. (a) Before hearing or deciding a motion to certify a class action, a trial court must hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The court's ruling must be reflected in a written order.

(b) If a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, a person may,

as part of an appeal of the order certifying the class action, obtain appellate review of the order denying the plea to the jurisdiction.

(c) This section does not alter or abrogate a person's right to appeal or pursue an original proceeding in an appellate court in regard to a trial court's order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.

SECTION 1.02. Section 22.225, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(b) Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review [~~writ of error~~] is not allowed to [~~from~~] the supreme court, in the following civil cases:

(1) a case appealed from a county court or from a district court when, under the constitution, a county court would have had original or appellate jurisdiction of the case, with the exception of a probate matter or a case involving state revenue laws or the validity or construction of a statute;

(2) a case of a contested election other than a contested election for a state officer, with the exception of a case where the validity of a statute is questioned by the decision;

(3) an appeal from an interlocutory order appointing a receiver or trustee or from other interlocutory appeals that are allowed by law;

(4) an appeal from an order or judgment in a suit in which a temporary injunction has been granted or refused or when a motion to dissolve has been granted or overruled; and

(5) all other cases except the cases where appellate jurisdiction is given to the supreme court and is not made final in the courts of appeals.

(d) A petition for review [~~writ of error~~] is allowed to [~~from~~] the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) or (6) [~~51.014(6)~~], Civil Practice and Remedies Code.

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.03. Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I [~~1~~], Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a

defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code; [~~or~~]

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or

(10) grants relief sought by a motion under Section 74.351(l).

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), stays [~~shall have the effect of staying~~] the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), or (8) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay [~~of the commencement of trial~~] under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

SECTION 1.04. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.05. (a) The changes in law made by Section 1.02 of this Act to Section 22.225(d), Government Code, apply to any case in which a petition for review to the Supreme Court of Texas is filed on or after the effective date of this Act.

(b) The changes in law made by Section 1.03 of this Act to Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply to any case in which an appeal allowed by Section 51.014(a), Civil Practice and Remedies Code, as amended by this Act, is taken and the notice of appeal is filed on or after the effective date of this Act.

ARTICLE 2. SETTLEMENT

SECTION 2.01. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 42 to read as follows:

CHAPTER 42. SETTLEMENT

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages.

(2) "Claimant" means a person making a claim.

(3) "Defendant" means a person from whom a claimant seeks recovery on a claim, including a counterdefendant,

cross-defendant, or third-party defendant.

(4) "Governmental unit" means the state, a unit of state government, or a political subdivision of this state.

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the case in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable fees for not more than two testifying expert witnesses; and

(C) reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with this chapter.

Sec. 42.002. APPLICABILITY AND EFFECT. (a) The settlement procedures provided in this chapter apply only to claims for monetary relief.

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court.

(c) This chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. If there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with this chapter; or

(2) offer to settle or compromise a claim to which this chapter does not apply.

(e) An offer to settle or compromise that is not made under this chapter or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.

Sec. 42.003. MAKING SETTLEMENT OFFER. A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

Sec. 42.004. AWARDING LITIGATION COSTS. (a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party.

(b) A judgment will be significantly less favorable to the rejecting party than is the settlement offer if:

(1) the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer; or

(2) the rejecting party is a defendant and the award will be more than 120 percent of the rejected offer.

(c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting

party rejected the settlement offer.

(d) The litigation costs that may be awarded under this chapter may not be greater than an amount computed by:

(1) determining the sum of:

(A) 50 percent of the economic damages to be awarded to the claimant in the judgment;

(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and

(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and

(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.

(e) If a claimant or defendant is entitled to recover fees and costs under another law, that claimant or defendant may not recover litigation costs in addition to the fees and costs recoverable under the other law.

(f) If a claimant or defendant is entitled to recover fees and costs under another law, the court must not include fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).

(g) If litigation costs are to be awarded against a claimant, those litigation costs shall be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) The supreme court shall promulgate rules implementing this chapter. The rules must be limited to settlement offers made under this chapter. The rules must be in effect on January 1, 2004.

(b) The rules promulgated by the supreme court must provide:

(1) the date by which a defendant or defendants must file the declaration required by Section 42.002(c);

(2) the date before which a party may not make a settlement offer;

(3) the date after which a party may not make a settlement offer; and

(4) procedures for:

(A) making an initial settlement offer;

(B) making successive settlement offers;

(C) withdrawing a settlement offer;

(D) accepting a settlement offer;

(E) rejecting a settlement offer; and

(F) modifying the deadline for making, withdrawing, accepting, or rejecting a settlement offer.

(c) The rules promulgated by the supreme court must address actions in which there are multiple parties and must provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made may declare the offer void.

(d) The rules promulgated by the supreme court may:

(1) designate other actions to which the settlement procedure of this chapter does not apply; and

(2) address other matters considered necessary by the supreme court to the implementation of this chapter.

SECTION 2.02. The changes in law provided by this article apply only to an action filed on or after January 1, 2004.

ARTICLE 3. VENUE; FORUM NON CONVENIENS

SECTION 3.01. Section 74.024(c), Government Code, is amended to read as follows:

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs; [~~and~~]

(9) standards for selection and management of nonjudicial personnel; and

(10) transfer of related cases for consolidated or coordinated pretrial proceedings.

SECTION 3.02. Chapter 74, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION. (a) The judicial panel on multidistrict litigation consists of five members designated from time to time by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or administrative judges.

(b) The concurrence of three panel members is necessary to any action by the panel.

Sec. 74.162. TRANSFER OF CASES BY PANEL. Notwithstanding any other law to the contrary, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will:

(1) be for the convenience of the parties and witnesses; and

(2) promote the just and efficient conduct of the actions.

Sec. 74.163. OPERATION; RULES. (a) The judicial panel on multidistrict litigation must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. The rules adopted by the supreme court must:

(1) allow the panel to transfer related civil actions for consolidated or coordinated pretrial proceedings;

(2) allow transfer of civil actions only on the panel's written finding that transfer is for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions;

(3) require the remand of transferred actions to the transferor court for trial on the merits; and

(4) provide for appellate review of certain or all panel orders by extraordinary writ.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.

Sec. 74.164. AUTHORITY TO PRESIDE. Notwithstanding any other law to the contrary, a judge who is qualified and authorized

by law to preside in the court to which an action is transferred under this subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.

SECTION 3.03. Section 15.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING PLAINTIFFS. (a) In a suit in which there is [~~where~~] more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, [~~is joined~~] each plaintiff must, independently of every [~~any~~] other plaintiff, establish proper venue. If a plaintiff cannot independently [~~Any person who is unable to~~] establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, must be transferred to a county of proper venue or dismissed, as is appropriate, [~~may not join or maintain venue for the suit as a plaintiff~~] unless that plaintiff [~~the person~~], independently of every [~~any~~] other plaintiff, establishes that:

(1) joinder of that plaintiff or intervention in the suit by that plaintiff is proper under the Texas Rules of Civil Procedure;

(2) maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;

(3) there is an essential need to have that plaintiff's [~~the person's~~] claim tried in the county in which the suit is pending; and

(4) the county in which the suit is pending is a fair and convenient venue for that plaintiff [~~the person seeking to join in or maintain venue for the suit~~] and all [~~the~~] persons against whom the suit is brought.

(b) An interlocutory appeal may be taken of a trial court's determination under Subsection (a) that:

(1) a plaintiff did or did not independently establish proper venue; or

(2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4) [~~A person may not intervene or join in a pending suit as a plaintiff unless the person, independently of any other plaintiff:~~

[~~(1) establishes proper venue for the county in which the suit is pending; or~~

[~~(2) satisfies the requirements of Subdivisions (1) through (4) of Subsection (a)~~].

(c) An [~~Any person seeking intervention or joinder, who is unable to independently establish proper venue, or a party opposing intervention or joinder of such a person may contest the decision of the trial court allowing or denying intervention or joinder by taking an~~] interlocutory appeal permitted by Subsection (b) must be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. The appeal may be taken by a party that is affected by the trial court's determination under Subsection (a). [~~The appeal must be perfected not later than the 20th day after the date the trial court signs the order denying or allowing the intervention or joinder.~~] The court of appeals shall:

(1) determine whether the trial court's order [~~joinder or intervention~~] is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard; and

(2) render judgment [~~its decision~~] not later than the 120th day after the date the appeal is perfected [~~by the complaining~~

~~party~~].

(d) An interlocutory appeal under Subsection (b) has the effect of staying the commencement of trial in the trial court pending resolution of the appeal.

SECTION 3.04. Section 71.051(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court may consider whether [~~With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that~~]:

(1) an alternate [~~alternative~~] forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

SECTION 3.05. Section 5A, Texas Probate Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.06. Section 5B, Texas Probate Code, is amended to read as follows:

Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.07. Section 607, Texas Probate Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.08. Section 281.056(a), Health and Safety Code, is amended to read as follows:

(a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

SECTION 3.09. Sections 71.051(a) and 71.052, Civil Practice and Remedies Code, are repealed.

ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND

DESIGNATION OF RESPONSIBLE PARTIES

SECTION 4.01. Section 33.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This [~~Except as provided by Subsections (b) and (c), this~~] chapter applies to:

(1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or

(2) any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

SECTION 4.02. Section 33.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.003. DETERMINATION OF PERCENTAGE OF RESPONSIBILITY. (a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been designated [~~joined~~] under Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

SECTION 4.03. The heading to Section 33.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.004. DESIGNATION [~~JOINDER~~] OF RESPONSIBLE THIRD PARTY [~~PARTIES~~].

SECTION 4.04. Section 33.004, Civil Practice and Remedies Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (f)-(l) to read as follows:

(a) A [~~Except as provided in Subsections (d) and (e), prior to the expiration of limitations on the claimant's claim for damages against the defendant and on timely motion made for that purpose, a~~] defendant may seek to designate a person as [~~join~~] a responsible third party by filing a motion for leave to designate that person as a responsible third party [~~who has not been sued by the claimant~~]. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Nothing in this section affects [~~shall affect~~] the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant

of rights to contribution or indemnity. Nothing in this section affects [~~shall affect~~] the filing of cross-claims or counterclaims.

(e) If a person is designated under this section as a responsible third party, a [~~A~~] claimant is not barred by limitations from seeking to [~~may~~] join that person [~~a responsible third party~~], even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person [~~the responsible third party~~] not later than 60 days after that person is designated as a responsible third party [~~a third party claim is filed under Subsection (d)~~].

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

(h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

(1) does not by itself impose liability on the person; and

(2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

(1) the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

(2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

(3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure.

(k) An unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, are amended to read as follows:

(1) "Claimant" means a person [~~party~~] seeking recovery of damages [~~pursuant to the provisions of Section 33.001~~], including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff [~~seeking recovery of damages~~]. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes:

(A) the person who was injured, was harmed, or died or whose property was damaged; and

(B) any person who is [~~both that other person and the party~~] seeking, has sought, or could seek recovery of damages for the injury, harm, or death of that person or for the damage to the property of that person [~~pursuant to the provisions of Section 33.001~~].

(2) "Defendant" includes any person [~~party~~] from whom, at the time of the submission of the case to the trier of fact, a claimant seeks recovery of damages [~~pursuant to the provisions of Section 33.001 at the time of the submission of the case to the trier of fact~~].

(5) "Settling person" means a person who [~~at the time of submission~~] has, at any time, paid or promised to pay money or anything of monetary value to a claimant [~~at any time~~] in consideration of potential liability [~~pursuant to the provisions of Section 33.001~~] with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6) [~~(A)~~] "Responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these. [~~to whom all of the following apply:~~

[~~(i) the court in which the action was filed could exercise jurisdiction over the person;~~

[~~(ii) the person could have been, but was not, sued by the claimant; and~~

[~~(iii) the person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.~~

[~~(B)~~] The term "responsible third party" does not include a seller eligible for indemnity under Section 82.002[~~:~~

[~~(i) the claimant's employer, if the employer maintained workers' compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or~~

[~~(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor~~].

SECTION 4.06. Section 33.012, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility [~~credit equal to one of the following, as elected in accordance with Section 33.014:~~

[~~(1) the sum of the dollar amounts of all settlements; or~~

[~~(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:~~

[~~(A) 5 percent of those damages up to $200,000;~~

[~~(B) 10 percent of those damages from $200,001 to $400,000;~~

[~~(C) 15 percent of those damages from $400,001 to $500,000; and~~

[~~(D) 20 percent of those damages greater than $500,000~~].

(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or

(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact.

(d) An election made under Subsection (c) shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subsection (c)(1).

SECTION 4.07. Section 33.013, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection [~~Subsections~~] (b) [~~and (c)~~], a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (securing execution of document by deception);

(L) Section 32.47 (fraudulent destruction,

removal, or concealment of writing); or

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. A defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

SECTION 4.08. Section 33.017, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY. Nothing in this chapter shall be construed to affect any rights of indemnity granted by [~~to a seller eligible for indemnity by Chapter 82, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or~~] any [~~other~~] statute, [~~nor shall it affect rights of indemnity granted~~] by contract, or by [~~at~~] common law. To the extent of any conflict between this chapter and any right to indemnification granted by [~~Section 82.002, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other~~] statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

SECTION 4.09. Section 417.001(b), Labor Code, is amended to read as follows:

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest [~~that paid or assumed by the insurance carrier to the employee or the legal beneficiary~~], the insurance carrier shall:

(1) reimburse itself and pay the costs from the amount recovered; and

(2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

SECTION 4.10. The following sections of the Civil Practice and Remedies Code are repealed:

(1) 33.002(b), (d), (e), (f), (g), and (h);
(2) 33.004(c) and (d);
(3) 33.011(7);
(4) 33.012(c);
(5) 33.013(c); and
(6) 33.014.

SECTION 4.11. Nothing in the changes to Chapter 33, Civil Practice and Remedies Code, made by this article allowing an employer covered by workers' compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

SECTION 4.12. The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Section 16.012, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.012. PRODUCTS LIABILITY[~~: MANUFACTURING EQUIPMENT~~]. (a) In this section:

(1) "Claimant," [~~"products liability action,"~~] "seller," and "manufacturer" have the meanings assigned by Section 82.001.

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss of real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief. [~~"Manufacturing equipment" means equipment and machinery used in the manufacturing, processing, or fabrication of tangible personal property but does not include agricultural equipment or machinery.~~]

(b) Except as provided by Subsections [~~Subsection~~] (c), (d), and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product [~~manufacturing equipment~~] before the end of 15 years after the date of the sale of the product [~~equipment~~] by the defendant.

(c) If a manufacturer or seller expressly warrants in writing [~~represents~~] that the product [~~manufacturing equipment~~] has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product [~~equipment~~] before the end of the number of years warranted [~~represented~~] after the date of the sale of the product [~~equipment~~] by that seller.

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

(1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;

(2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and

(3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) [~~that applies to a products liability action involving manufacturing equipment~~] that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving the product [~~manufacturing equipment~~] may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of a product [~~manufacturing equipment~~].

(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101) or its exceptions are applicable.

SECTION 5.02. Chapter 82, Civil Practice and Remedies Code, is amended by adding Sections 82.003, 82.007, and 82.008 to read as follows:

Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect; or

(7) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

Sec. 82.007. MEDICINES. (a) In a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

(1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under

the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or

(2) the warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.

(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that:

(1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

(3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as recommended, promoted, or advertised; and

(C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product;

(4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as prescribed; and

(C) the claimant's injury was causally related to the prescribed use of the product; or

(5) the defendant, before or after pre-market approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C. Section 201 and that conduct caused the warnings or instructions approved for the product by the United States Food and Drug Administration to be inadequate.

Sec. 82.008. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

(c) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or

seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

(d) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

(e) This section does not extend to products covered by Section 82.007.

SECTION 5.03. As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

ARTICLE 6. INTEREST

SECTION 6.01. Section 304.003(c), Finance Code, is amended to read as follows:

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Federal Reserve Bank of New York on [~~auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before~~] the date of computation;

(2) five [~~10~~] percent a year if the prime rate as published by the Federal Reserve Bank of New York [~~auction rate~~] described by Subdivision (1) is less than five [~~10~~] percent; or

(3) 15 [~~20~~] percent a year if the prime rate as published by the Federal Reserve Bank of New York [~~auction rate~~] described by Subdivision (1) is more than 15 [~~20~~] percent.

SECTION 6.02. Subchapter B, Chapter 304, Finance Code, is amended by adding Section 304.1045 to read as follows:

Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may not be assessed or recovered on an award of future damages.

SECTION 6.03. Section 304.108, Finance Code, is repealed.

SECTION 6.04. The changes in law made by this article apply in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

ARTICLE 7. APPEAL BONDS

SECTION 7.01. Section 35.006, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 35.006. STAY. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay

enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement [~~satisfaction~~] of the judgment that is required in this state in accordance with Section 52.006.

SECTION 7.02. Chapter 52, Civil Practice and Remedies Code, is amended by adding Section 52.006 to read as follows:

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a) Subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of:

(1) the amount of compensatory damages awarded in the judgment;

(2) interest for the estimated duration of the appeal; and

(3) costs awarded in the judgment.

(b) Notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of:

(1) 50 percent of the judgment debtor's net worth; or

(2) $25 million.

(c) On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

(d) An appellate court may review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court may not modify the amount of security to exceed the amount allowed under this section.

(e) Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

SECTION 7.03. The following sections of the Civil Practice and Remedies Code are repealed:

(1) 52.002;

(2) 52.003; and

(3) 52.004.

SECTION 7.04. (a) The changes in law made in Section 7.01 of this article apply to any judgment filed in this state under Chapter 35, Civil Practice and Remedies Code, on or after the effective date of this Act.

(b) The changes in law made in Sections 7.02 and 7.03 of this article apply to any case in which a final judgment is signed on or after the effective date of this Act.

ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

SECTION 8.01. Sections 545.412(d) and 545.413(g), Transportation Code, are repealed.

ARTICLE 9. RESERVED

ARTICLE 10. HEALTH CARE

SECTION 10.01. Chapter 74, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 74. MEDICAL LIABILITY [~~GOOD SAMARITAN LAW; LIABILITY FOR EMERGENCY CARE~~]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 74.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified person, including any direct or indirect parent or subsidiary.

(2) "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person, whether through ownership of equity or securities, by contract, or otherwise.

(4) "Court" means any federal or state court.

(5) "Disclosure panel" means the Texas Medical Disclosure Panel.

(6) "Economic damages" has the meaning assigned by Section 41.001.

(7) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or that is unrelated to the original medical emergency.

(8) "Emergency medical services provider" means a licensed public or private provider to which Chapter 773, Health and Safety Code, applies.

(9) "Gross negligence" has the meaning assigned by Section 41.001.

(10) "Health care" means any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care institution" includes:

(A) an ambulatory surgical center;

(B) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(C) an emergency medical services provider;

(D) a health services district created under Chapter 287, Health and Safety Code;

(E) a home and community support services agency;

(F) a hospice;

(G) a hospital;

(H) a hospital system;

(I) an intermediate care facility for the

mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended;

(J) a nursing home; or

(K) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code.

(12)(A) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including:

(i) a registered nurse;

(ii) a dentist;

(iii) a podiatrist;

(iv) a pharmacist;

(v) a chiropractor;

(vi) an optometrist; or

(vii) a health care institution.

(B) The term includes:

(i) an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and

(ii) an employee, independent contractor, or agent of a health care provider or physician acting in the course and scope of the employment or contractual relationship.

(13) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

(14) "Home and community support services agency" means a licensed public or provider agency to which Chapter 142, Health and Safety Code, applies.

(15) "Hospice" means a hospice facility or activity to which Chapter 142, Health and Safety Code, applies.

(16) "Hospital" means a licensed public or private institution as defined in Chapter 241, Health and Safety Code, or licensed under Chapter 577, Health and Safety Code.

(17) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(18) "Intermediate care facility for the mentally retarded" means a licensed public or private institution to which Chapter 252, Health and Safety Code, applies.

(19) "Medical care" means any act defined as practicing medicine under Section 151.002, Occupations Code, performed or furnished, or which should have been performed, by one licensed to practice medicine in this state for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(20) "Noneconomic damages" has the meaning assigned by Section 41.001.

(21) "Nursing home" means a licensed public or private institution to which Chapter 242, Health and Safety Code, applies.

(22) "Pharmacist" means one licensed under Chapter 1, Occupations Code, who, for the purposes of this chapter, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(23) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) by an individual physician or group of physicians;

(C) a partnership or limited liability partnership formed by a group of physicians;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code; or

(E) a company formed by a group of physicians under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(24) "Professional or administrative services" means those duties or services that a physician or health care provider is required to provide as a condition of maintaining the physician's or health care provider's license, accreditation status, or certification to participate in state or federal health care programs.

(25) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with the common law.

Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE. (a) In the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.

(b) Notwithstanding Subsection (a), in the event of a conflict between this chapter and Section 101.023, 102.003, or 108.002, those sections of this code control to the extent of the conflict.

(c) The district courts and statutory county courts in a county may not adopt local rules in conflict with this chapter.

Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. This chapter does not waive sovereign immunity from suit or from liability.

Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a) Notwithstanding any other law, Sections 17.41-17.63, Business & Commerce Code, do not apply to physicians or health care providers with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section does not apply to pharmacists.

[Sections 74.005-74.050 reserved for expansion]

SUBCHAPTER B. NOTICE AND PLEADINGS

Sec. 74.051. NOTICE. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim. The notice must be accompanied by the authorization form for release of protected health information as required under Section 74.052.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and Section 74.052 and shall provide such evidence thereof as the judge of the court may require to

determine if the provisions of this chapter have been met.

(c) Notice given as provided in this chapter shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Section 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection.

(e) For the purposes of this section, and notwithstanding Chapter 159, Occupations Code, or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization in the form required by Section 74.052 signed by a parent, spouse, or adult child of the deceased or incompetent person.

Sec. 74.052. AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION. (a) Notice of a health care claim under Section 74.051 must be accompanied by a medical authorization in the form specified by this section. Failure to provide this authorization along with the notice of health care claim shall abate all further proceedings against the physician or health care provider receiving the notice until 60 days following receipt by the physician or health care provider of the required authorization.

(b) If the authorization required by this section is modified or revoked, the physician or health care provider to whom the authorization has been given shall have the option to abate all further proceedings until 60 days following receipt of a replacement authorization that must comply with the form specified by this section.

(c) The medical authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164).

AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, _____ (name of patient or authorized representative), hereby authorize _____ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. To facilitate the investigation and evaluation of the health care claim described in the accompanying Notice of Health Care Claim; or

2. Defense of any litigation arising out of the claim made the basis of the accompanying Notice of Health Care Claim.

B. The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written and is specifically described as follows:

1. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) in connection with the injuries alleged to have been sustained in connection with the claim asserted in the accompanying Notice of Health Care Claim. (Here list the name and current address of all treating physicians or health care providers). This authorization shall extend to any additional physicians or health care providers that may in the future evaluate, examine, or treat _____ (patient) for

injuries alleged in connection with the claim made the basis of the attached Notice of Health Care Claim;

2. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) during a period commencing five years prior to the incident made the basis of the accompanying Notice of Health Care Claim. (Here list the name and current address of such physicians or health care providers, if applicable.)

C. Excluded Health Information - the following constitutes a list of physicians or health care providers possessing health care information concerning _____ (patient) to which this authorization does not apply because I contend that such health care information is not relevant to the damages being claimed or to the physical, mental, or emotional condition of _____ (patient) arising out of the claim made the basis of the accompanying Notice of Health Care Claim. (Here state "none" or list the name of each physician or health care provider to whom this authorization does not extend and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure.)

D. The persons or class of persons to whom the health information of _____ (patient) will be disclosed or who will make use of said information are:

1. Any and all physicians or health care providers providing care or treatment to _____ (patient);

2. Any liability insurance entity providing liability insurance coverage or defense to any physician or health care provider to whom Notice of Health Care Claim has been given with regard to the care and treatment of _____ (patient);

3. Any consulting or testifying experts employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on behalf of _____(name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of _____ (patient).

E. This authorization shall expire upon resolution of the claim asserted or at the conclusion of any litigation instituted in connection with the subject matter of the Notice of Health Care Claim accompanying this authorization, whichever occurs sooner.

F. I understand that, without exception, I have the right to revoke this authorization in writing. I further understand the consequence of any such revocation as set out in Section 74.052, Civil Practice and Remedies Code.

G. I understand that the signing of this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. 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.

Signature of Patient/Representative

_____

Date

_____

Name of Patient/ Representative

_____

Description of Representative's Authority

Sec. 74.053. PLEADINGS NOT TO STATE DAMAGE AMOUNT; SPECIAL EXCEPTION; EXCLUSION FROM SECTION. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

[Sections 74.054-74.100 reserved for expansion]

SUBCHAPTER C. INFORMED CONSENT

Sec. 74.101. THEORY OF RECOVERY. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The disclosure panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the disclosure panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the disclosure panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in this chapter shall be exercised solely by the disclosure panel, and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The disclosure panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the disclosure panel shall be selected by the commissioner of health.

(d) At the expiration of the term of each member of the disclosure panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the disclosure panel present at each such meeting may be removed by the commissioner at the request of the disclosure panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the disclosure panel are not entitled to compensation for their services, but each panelist is entitled to

reimbursement of any necessary expense incurred in the performance of his duties on the panel, including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the disclosure panel's list requiring disclosure, the physician or health care provider shall disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 74.105.

Sec. 74.105. MANNER OF DISCLOSURE. Consent to medical care that appears on the disclosure panel's list requiring disclosure shall be considered effective under this chapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the disclosure panel under Section 74.103.

Sec. 74.106. EFFECT OF DISCLOSURE. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 74.104 and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not

required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Sections 74.104 and 74.105 have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 74.104 and 74.105 shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 74.104 and 74.105, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the disclosure panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) The disclosure panel shall develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy.

(b) The materials shall be available in English, Spanish, and any other language the panel considers appropriate. The information must be presented in a manner understandable to a layperson.

(c) The materials must include:

(1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment;

(2) the name of the person providing and explaining the materials;

(3) a statement that the patient or person authorized to consent for the patient understands that the hysterectomy is permanent and nonreversible and that the patient will not be able to become pregnant or bear children if she undergoes a hysterectomy;

(4) a statement that the patient has the right to seek a consultation from a second physician;

(5) a statement that the patient or person authorized to consent for the patient has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina;

(6) a description of the risks and hazards involved in the performance of the procedure; and

(7) a written statement to be signed by the patient or person authorized to consent for the patient indicating that the materials have been provided and explained to the patient or person authorized to consent for the patient and that the patient or person authorized to consent for the patient understands the nature and consequences of a hysterectomy.

(d) The physician or health care provider shall obtain informed consent under this section and Section 74.104 from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not reasonably possible. If obtaining informed consent is not reasonably possible, the physician or health care provider shall include in the patient's medical records a written statement signed by the physician

certifying the nature of the emergency.

(e) The disclosure panel may not prescribe materials under this section without first consulting with the Texas State Board of Medical Examiners.

[Sections 74.108-74.150 reserved for expansion]

SUBCHAPTER D. EMERGENCY CARE

Sec. 74.151. LIABILITY FOR EMERGENCY CARE. (a) A person who in good faith administers emergency care, including using an automated external defibrillator, [~~at the scene of an emergency but not in a hospital or other health care facility or means of medical transport~~] is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

(b) This section does not apply to care administered:

(1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or

(2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.

[~~(c) If the scene of an emergency is in a hospital or other health care facility or means of medical transport, a person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent, provided that this subsection does not apply to care administered:~~

[~~(1) by a person who regularly administers care in a hospital emergency room unless such person is at the scene of the emergency for reasons wholly unrelated to the person's work in administering health care; or~~

[~~(2) by an admitting or attending physician of the patient or a treating physician associated by the admitting or attending physician of the patient in question.~~

[~~(d) For purposes of Subsections (b)(1) and (c)(1), a person who would ordinarily receive or be entitled to receive a salary, fee, or other remuneration for administering care under such circumstances to the patient in question shall be deemed to be acting for or in expectation of remuneration even if the person waives or elects not to charge or receive remuneration on the occasion in question.~~]

(e) This section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered.

Sec. 74.152 [~~74.002~~]. UNLICENSED MEDICAL PERSONNEL. Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the

physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the court shall instruct the jury to consider, together with all other relevant matters:

(1) whether the person providing care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the presence or lack of a preexisting physician-patient relationship or health care provider-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the circumstances surrounding the delivery of the emergency medical care.

(b) The provisions of Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is related to an emergency caused in whole or in part by the negligence of the defendant.

[Sections 74.155-74.200 reserved for expansion]

SUBCHAPTER E. RES IPSA LOQUITUR

Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. The common law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977.

[Sections 74.202-74.250 reserved for expansion]

SUBCHAPTER F. STATUTE OF LIMITATIONS

Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to Subsection (b), no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided this section applies to all persons regardless of minority or other legal disability.

(b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives

rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.

[Sections 74.252-74.300 reserved for expansion]

SUBCHAPTER G. LIABILITY LIMITS

Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the physician or health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(b) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant.

(c) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000 for each claimant.

Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES. (a) In the event that Section 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

(1) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the physician or health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(2) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant.

(3) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and

entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000 for each claimant.

(b) Effective before September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least $200,000 for each health care liability claim and at least $600,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $500,000 for each health care liability claim and at least $1.5 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(c) Effective September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least $300,000 for each health care liability claim and at least $900,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $750,000 for each health care liability claim and at least $2.25 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(d) Effective September 1, 2007, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least $500,000 for each health care liability claim and at least $1 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $1 million for each health care liability claim and at least $3 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(e) Evidence of financial responsibility may be established at the time of judgment by providing proof of:

(1) the purchase of a contract of insurance or other plan of insurance authorized by this state or federal law or regulation;

(2) the purchase of coverage from a trust organized and operating under Article 21.49-4, Insurance Code;

(3) the purchase of coverage or another plan of insurance provided by or through a risk retention group or purchasing group authorized under applicable laws of this state or under the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as amended, or the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any other contract or arrangement for transferring and distributing risk relating to legal liability for damages, including cost or defense, legal costs, fees, and other claims expenses; or

(4) the maintenance of financial reserves in or an irrevocable letter of credit from a federally insured financial institution that has its main office or a branch office in this state.

Sec. 74.303. LIMITATION ON DAMAGES. (a) In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages, including exemplary damages, shall be limited to an amount not to exceed $500,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(b) When there is an increase or decrease in the consumer price index with respect to the amount of that index on August 29, 1977, the liability limit prescribed in Subsection (a) shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average - All Items), between August 29, 1977, and the time at which damages subject to such limits are awarded by final judgment or settlement.

(c) Subsection (a) does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(d) The liability of any insurer under the common law theory of recovery commonly known in Texas as the "Stowers Doctrine" shall not exceed the liability of the insured.

(e) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors:

(1) "Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law."

(2) "A finding of negligence may not be based solely on evidence of a bad result to the claimant in question, but a bad result may be considered by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence."

[Sections 74.304-74.350 reserved for expansion]

SUBCHAPTER H. PROCEDURAL PROVISIONS

Sec. 74.351. EXPERT REPORT. (a) In a health care liability claim, a claimant shall, not later than the 120th day after the date the claim was filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

(b) If, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected physician or health care provider, shall, subject to Subsection (c), enter an order that:

(1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and

(2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.

(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, then the 30-day extension shall run from the date the plaintiff first received the notice.

[Subsections (d)-(h) reserved]

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

(j) Nothing in this section shall be construed to require the serving of an expert report regarding any issue other than an issue relating to liability or causation.

(k) Subject to Subsection (t), an expert report served under this section:

(1) is not admissible in evidence by any party;

(2) shall not be used in a deposition, trial, or other proceeding; and

(3) shall not be referred to by any party during the course of the action for any purpose.

(l) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6).

[Subsections (m)-(q) reserved]

(r) In this section:

(1) "Affected parties" means the claimant and the physician or health care provider who are directly affected by an act or agreement required or permitted by this section and does not

include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claim" means a health care liability claim.

[(3) reserved]

(4) "Defendant" means a physician or health care provider against whom a health care liability claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(5) "Expert" means:

(A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of Section 74.401;

(B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of Section 74.402;

(C) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health care liability claim, a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence;

(D) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a dentist, a dentist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence; or

(E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a podiatrist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence.

(6) "Expert report" means a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

(s) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, including medical or hospital records or other documents or tangible things, related to the patient's health care through:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(t) If an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a), the restrictions imposed by Subsection (k) on use of the expert report by any party are waived.

(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a).

Sec. 74.352. DISCOVERY PROCEDURES. (a) In every health care liability claim the plaintiff shall within 45 days after the

date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(b) Every physician or health care provider who is a defendant in a health care liability claim shall within 45 days after the date on which an answer to the petition was due serve on the plaintiff's attorney or, if the plaintiff is not represented by an attorney, on the plaintiff full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(c) Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and things, but no response shall be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case.

(d) Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things in accordance with Subsections (a) and (b) or the making of a groundless objection under Subsection (c) shall be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party.

(e) The time limits imposed under Subsections (a) and (b) may be extended by the court on the motion of a responding party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties. In no event shall an extension be for a period of more than an additional 30 days.

(f) If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action.

(g) If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses in accordance with the Texas Rules of Civil Procedure.

(h) Nothing in this section shall preclude any party from taking additional non-duplicative discovery of any other party. The standard sets of interrogatories provided for in this section shall not constitute, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.

[Sections 74.353-74.400 reserved for expansion]

SUBCHAPTER I. EXPERT WITNESSES

Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if the person is a physician who:

(1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;

(2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

(b) For the purpose of this section, "practicing medicine" or "medical practice" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is board certified or has other substantial training or experience in an area of medical practice relevant to the claim; and

(2) is actively practicing medicine in rendering medical care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but may depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

(f) This section does not prevent a physician who is a defendant from qualifying as an expert.

(g) In this subchapter, "physician" means a person who is:

(1) licensed to practice medicine in one or more states in the United States; or

(2) a graduate of a medical school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association only if testifying as a defendant and that testimony relates to that defendant's standard of care, the alleged departure from that standard of care, or the causal relationship between the alleged departure from that standard of care and the injury, harm, or damages claimed.

Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT

AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section, "practicing health care" includes:

(1) training health care providers in the same field as the defendant health care provider at an accredited educational institution; or

(2) serving as a consulting health care provider and being licensed, certified, or registered in the same field as the defendant health care provider.

(b) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:

(1) is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose;

(2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and

(2) is actively practicing health care in rendering health care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) This section does not prevent a health care provider who is a defendant, or an employee of the defendant health care provider, from qualifying as an expert.

(f) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's

qualifications.

Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by Subsections (b) and (c), in a suit involving a health care liability claim against a physician or health care provider, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(b) In a suit involving a health care liability claim against a dentist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a dentist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(c) In a suit involving a health care liability claim against a podiatrist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a podiatrist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(d) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

[Sections 74.404-74.450 reserved for expansion]

SUBCHAPTER J. ARBITRATION AGREEMENTS

Sec. 74.451. ARBITRATION AGREEMENTS. (a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10-point boldface type clearly and conspicuously stating:

UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

(b) A violation of this section by a physician or

professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and shall be subject to the enforcement provisions and sanctions contained in that subtitle.

(c) A violation of this section by a health care provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Section 17.47, Business & Commerce Code, notwithstanding Section 74.004 or any other law.

(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.

[Sections 74.452-74.500 reserved for expansion]

SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

Sec. 74.501. DEFINITIONS. In this subchapter:

(1) "Future damages" means damages that are incurred after the date of judgment for:

(A) medical, health care, or custodial care services;

(B) physical pain and mental anguish, disfigurement, or physical impairment;

(C) loss of consortium, companionship, or society; or

(D) loss of earnings.

(2) "Future loss of earnings" means the following losses incurred after the date of the judgment:

(A) loss of income, wages, or earning capacity and other pecuniary losses; and

(B) loss of inheritance.

(3) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Sec. 74.502. SCOPE OF SUBCHAPTER. This subchapter applies only to an action on a health care liability claim against a physician or health care provider in which the present value of the award of future damages, as determined by the court, equals or exceeds $100,000.

Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court shall order that medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

(b) At the request of a defendant physician or health care provider or claimant, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump sum payment.

(c) The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages.

(d) The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

(1) recipient of the payments;
(2) dollar amount of the payments;
(3) interval between payments; and
(4) number of payments or the period of time over which payments must be made.

Sec. 74.504. RELEASE. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the claimant.

Sec. 74.505. FINANCIAL RESPONSIBILITY. (a) As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

(b) The judgment must provide for payments to be funded by:
(1) an annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;
(2) an obligation of the United States;
(3) applicable and collectible liability insurance from one or more qualified insurers; or
(4) any other satisfactory form of funding approved by the court.

(c) On termination of periodic payments of future damages, the court shall order the return of the security, or as much as remains, to the defendant.

Sec. 74.506. DEATH OF RECIPIENT. (a) On the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction.

(b) Periodic payments, other than future loss of earnings, terminate on the death of the recipient.

(c) If the recipient of periodic payments dies before all payments required by the judgment are paid, the court may modify the judgment to award and apportion the unpaid damages for future loss of earnings in an appropriate manner.

(d) Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant physician or health care provider to make further payments ends and any security given reverts to the defendant.

Sec. 74.507. AWARD OF ATTORNEY'S FEES. For purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, the court shall:
(1) place a total value on the payments based on the claimant's projected life expectancy; and
(2) reduce the amount in Subdivision (1) to present value.

SECTION 10.02. Section 84.003(1), Civil Practice and Remedies Code, is amended to read as follows:

(1) "Charitable organization" means:
(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, fire protection or prevention, emergency medical or hazardous material response services, or educational purposes, including [~~excluding~~] private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding

fraternities, sororities, and secret societies, [~~alumni associations and related on-campus organizations,~~] or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies [~~alumni associations and related on-campus organizations~~], or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

(C) a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986 or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code; or

(D) a volunteer center, as that term is defined by Section 411.126, Government Code.

SECTION 10.03. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

(6) "Hospital system" means a system of hospitals and other health care providers located in this state that are under the common governance or control of a corporate parent.

SECTION 10.04. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (7) to read as follows:

(7) "Person responsible for the patient" means:

(A) the patient's parent, managing conservator, or guardian;

(B) the patient's grandparent;

(C) the patient's adult brother or sister;

(D) another adult who has actual care, control, and possession of the patient and has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient;

(E) an educational institution in which the patient is enrolled that has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient; or

(F) any other person with legal responsibility for the care of the patient.

SECTION 10.05. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by

that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.06. Chapter 84, Civil Practice and Remedies Code, is amended by adding Section 84.0065 to read as follows:

Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a) Except as provided by Section 84.007, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of $500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:

(1) that the hospital is providing care that is not administered for or in expectation of compensation; and

(2) the limitations on the recovery of damages from the hospital in exchange for receiving the health care services.

(b) Subsection (a) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.07. Section 242.0372, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) An institution is not required to comply with this section before September 1, 2005. This subsection expires September 2, 2005.

SECTION 10.08. Article 5.15-1, Insurance Code, is amended by adding Section 11 to read as follows:

Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer, as that term is defined by Section 82.001, Civil Practice and Remedies Code. A physician or health care provider shall be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

SECTION 10.09. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is repealed.

SECTION 10.10. Unless otherwise removed as provided by law, a member of the Texas Medical Disclosure Panel serving on the effective date of this Act continues to serve for the term to which the member was appointed.

SECTION 10.11. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1995 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical

professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to the rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims, and defensive medicine has resulted in increasing cost to patients, private insurers, and Texas and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals; and

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, will have a positive effect on the rates charged by insurers for medical professional liability insurance.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and ensure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A

GOVERNMENTAL UNIT

SECTION 11.01. Sections 108.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except in an action arising under the constitution or laws of the United States, a public servant [~~, other than a provider of health care as that term is defined in Section 108.002(c),~~] is not personally liable for damages in excess of $100,000 arising from personal injury, death, or deprivation of a right, privilege, or immunity if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of $100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

(b) Except in an action arising under the constitution or laws of the United States, a public servant [~~, other than a provider of health care as that term is defined in Section 108.002(c),~~] is not liable for damages in excess of $100,000 for property damage if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of $100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

SECTION 11.02. Chapter 261, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 11.03. Section 285.071, Health and Safety Code, is

amended to read as follows:

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services [~~as a part of a rural health network as defined under 42 U.S.C. Section 1395i-4(g)~~] under contract with a hospital district that was created by general or special law [~~and that has a population under 50,000~~].

SECTION 11.04. Section 285.072, Health and Safety Code, is amended to read as follows:

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is [~~are~~], while performing services under the contract for the benefit of the hospital, an employee [~~employees~~] of the hospital district for the purposes of Chapters 101, [~~and~~] 102, and 108, Civil Practice and Remedies Code.

SECTION 11.05. Section 101.106, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 101.106. ELECTION OF REMEDIES. (a) The filing of a suit under this chapter against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter.

(b) The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents.

(c) The settlement of a claim arising under this chapter shall immediately and forever bar the claimant from any suit against or recovery from any employee of the same governmental unit regarding the same subject matter.

(d) A judgment against an employee of a governmental unit shall immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit.

(e) If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit.

(f) If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed. [~~EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR JUDGMENT. A judgment in an action or a settlement of a claim under this chapter bars any action involving the same subject matter by the claimant against the employee of the governmental unit whose act or omission gave rise to the claim.~~]

SECTION 11.06. Section 108.001, Civil Practice and Remedies Code, is amended by adding Subdivision (3) to read as follows:

(3) "Public servant" includes a licensed physician who provides emergency or postemergency stabilization services to patients in a hospital owned or operated by a unit of local government.

SECTION 11.07. Section 108.002(c), Civil Practice and

Remedies Code, is repealed.

ARTICLE 12. RESERVED

ARTICLE 13. DAMAGES

SECTION 13.01. The heading to Chapter 41, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 41. [~~EXEMPLARY~~] DAMAGES

SECTION 13.02. Section 41.001, Civil Practice and Remedies Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (8)-(13) to read as follows:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of [~~exemplary~~] damages. In a cause of action in which a party seeks recovery of [~~exemplary~~] damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of [~~exemplary~~] damages.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief [~~with respect to exemplary damages~~].

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or [~~for~~] pecuniary loss; the term does not include exemplary damages or noneconomic damages [~~for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society~~].

(5) "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 noneconomic damages. "Exemplary damages" includes punitive damages.

(7) "Malice" means[~~:~~

[~~(A)~~] a specific intent by the defendant to cause substantial injury or harm to the claimant[~~; or~~

[~~(B) an act or omission:~~

[~~(i) 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~~

[~~(ii) 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~~].

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "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.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

SECTION 13.03. Sections 41.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) This chapter applies to any action in which a claimant seeks [~~exemplary~~] damages relating to a cause of action.

(b) This chapter establishes the maximum [~~exemplary~~] damages that may be awarded in an action subject to this chapter, including an action for which [~~exemplary~~] damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of [~~exemplary~~] damages for a particular claim.

SECTION 13.04. Section 41.003, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) gross negligence [~~wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B)~~].

(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."

SECTION 13.05. Section 41.004(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) [~~A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A).~~] Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

SECTION 13.06. Section 41.008, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of [~~exemplary~~] damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or

(2) $200,000.

(c) This section [~~Subsection (b)~~] does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); or

(15) Section 49.08 (intoxication manslaughter).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of this section [~~Subsections (a) and (b)~~] may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section [~~Subsection (b)~~] does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

SECTION 13.07. Section 41.010(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Subject to Section 41.008, the [~~The~~] determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

SECTION 13.08. Chapter 41, Civil Practice and Remedies Code, is amended by adding Section 41.0105 to read as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

SECTION 13.09. Chapter 18, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CERTAIN LOSSES

Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION. (a) Notwithstanding any other law, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax

liability pursuant to any federal income tax law.

(b) If any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

ARTICLE 14. RESERVED

ARTICLE 15. SCHOOL EMPLOYEES

SECTION 15.01. Subchapter B, Chapter 22, Education Code, is amended by amending Section 22.051 and adding Sections 22.0511, 22.0513, 22.0514, 22.0516, and 22.0517 to read as follows:

Sec. 22.051. DEFINITION. In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;

(5) a member of the board of trustees of an independent school district; and

(6) any other person employed by a school district whose employment requires certification and the exercise of discretion.

Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL EMPLOYEES~~]. (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law [~~this section, "professional employee" includes:~~

[~~(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;~~

[~~(2) a student in an education preparation program participating in a field experience or internship;~~

[~~(3) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and~~

[~~(4) any other person whose employment requires certification and the exercise of discretion~~].

Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th

day before the date a person files a suit against a professional employee of a school district, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) A professional employee of a school district against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section.

(d) An abatement under Subsection (c) continues until the 90th day after the date that written notice is given to the professional employee of a school district as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in which a judicial proceeding is being brought against a professional employee of a school district may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. In an action against a professional employee of a school district involving an act that is incidental to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee is found immune from liability under this subchapter.

SECTION 15.02. Section 22.053(a), Education Code, is amended to read as follows:

(a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511 [~~22.051~~].

SECTION 15.03. Section 30.024(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.04. Section 30.055(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. Section 105.301(e), Education Code, is amended to read as follows:

(e) The academy is not subject to the provisions of this code, or to the rules of the Texas Education Agency, regulating public schools, except that:

(1) professional employees of the academy are entitled to the limited liability of an employee under Section 22.0511 [~~22.051~~] or 22.052;

(2) a student's attendance at the academy satisfies compulsory school attendance requirements; and

(3) for each student enrolled, the academy is entitled to allotments from the foundation school program under Chapter 42

as if the academy were a school district, except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District.

SECTION 15.06. The change in law made by this article applies only to a suit for damages or a school employee disciplinary proceeding involving conduct that occurs on or after the effective date of this Act. A suit for damages or a school employee disciplinary proceeding involving conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.02. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a

civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.03. The following laws are repealed:

(1) Sections 32.021(i) and (k), Human Resources Code; and

(2) Section 242.050, Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES

RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 17.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic corporation organized under the laws of this state; or

(B) a foreign corporation organized under laws other than the laws of this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as

a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitations in Section 149.003 shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).

(b) The limitations in Section 149.003 shall not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement;

(5) a successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor;

(6) a contractual obligation existing as of the effective date of this chapter that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to April 1, 2003, under the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or against such debtor, or against a bankruptcy trust established under 11 U.S.C. Section 524(g) or similar provisions of the United States Code in such a bankruptcy proceeding commenced prior to such date; or

(8) a successor asbestos-related liability arising from a claim brought under Chapter 95, a common law claim for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the

premise or premises at issue after the merger or consolidation.

Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as further limited in Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in Subsection (a) for purposes of determining the limitation of liability of a corporation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

Sec. 149.005. ADJUSTMENT. (a) Except as provided in Subsections (b), (c), and (d), the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise

included in the definition of total gross assets by Section 149.004(c).

Sec. 149.006. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 17.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all actions:

(1) commenced on or after the effective date of this Act; or

(2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

SECTION 18.01. Sections 84.004(a) and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer [~~who is serving as an officer, director, or trustee~~] of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's [~~his~~] duties or functions, including as an officer, director, or trustee within the organization.

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) [~~the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;~~

[~~(2)~~] the volunteer commits the act or omission in the course of providing health care services to the patient;

(2) [~~(3)~~] the services provided are within the scope of the license of the volunteer; and

(3) [~~(4)~~] before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for [~~patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of~~] the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

SECTION 18.02. Section 84.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter does not apply to an act or omission that is intentional, wilfully [~~or wantonly~~] negligent, or done with conscious indifference or reckless disregard for the safety of others.

SECTION 18.03. The following provisions of the Civil Practice and Remedies Code are repealed:

(1) Section 84.003(4); and

(2) Section 84.004(b).

ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS

AND VOLUNTEER FIRE FIGHTERS

SECTION 19.01. (a) The legislature finds that:

(1) 80 percent of the area of this state is currently protected by volunteer fire departments;

(2) concern regarding personal liability arising out of services rendered by volunteer fire fighters on behalf of volunteer fire departments deters individuals from offering their services as volunteer fire fighters;

(3) the diminishing number of volunteer fire fighters leads to increased costs and less service to areas of this state that are served by volunteer fire departments; and

(4) it is in the public interest of the citizens of this state to encourage the continued level of service provided by volunteer fire departments.

(b) The purpose of this article is to reduce the exposure to liability of:

(1) a volunteer fire department while involved in or providing an emergency response; and

(2) a volunteer fire fighter while acting as a member of a volunteer fire department.

SECTION 19.02. Chapter 78, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. In this subchapter:

(1) "Emergency response" means a response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

(2) "Volunteer fire department" means a nonprofit organization that is:

(A) operated by its members;

(B) exempt from the state sales tax under Section 151.310, Tax Code, or the state franchise tax under Section 171.083, Tax Code; and

(C) organized to provide an emergency response.

(3) "Volunteer fire fighter" means a member of a volunteer fire department.

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. This subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of:

(1) a volunteer fire department while involved in or providing an emergency response; or

(2) a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A volunteer fire department is:

(1) liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101; and

(2) entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A volunteer fire fighter is:

(1) liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable; and

(2) entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

ARTICLE 20. DESIGN PROFESSIONALS

SECTION 20.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 150 to read as follows:

CHAPTER 150. DESIGN PROFESSIONALS

Sec. 150.001. DEFINITION. In this chapter, "design professional" means a registered architect or licensed professional engineer.

Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered architect shall be licensed in this state and actively engaged in the practice of architecture or engineering.

(b) The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.

(c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.

(d) The plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) may result in dismissal with prejudice of the complaint against the defendant.

(e) This statute shall not be construed to extend any applicable period of limitation or repose.

ARTICLE 21. LIMITATIONS OF LIABILITY

SECTION 21.01. Section 75.002, Civil Practice and Remedies Code, is amended by adding Subsection (h) to read as follows:

(h) An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.

ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

SECTION 22.01. Section 311.041, Health and Safety Code, is amended to read as follows:

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, [~~and~~] responsibilities, and benefits that apply to [~~of nonprofit~~] hospitals for providing community benefits that include charity care.

SECTION 22.02. Subchapter D, Chapter 311, Health and Safety Code, is amended by adding Section 311.0456 to read as follows:

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED

LIABILITY. (a) In this section, "department" means the Texas Department of Health.

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the preceding fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a report based on its most recent completed and audited prior fiscal year to the department not later than April 30 of each year stating that the hospital or system is eligible for certification. The department must verify the information in the report not later than May 31 of the year in which the department receives the report by checking the information against the report filed by the hospital or system under Section 311.046. After the department has verified the information in the report, the department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on May 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

SECTION 22.03. The heading to Subchapter D, Chapter 311, Health and Safety Code, is amended to read as follows:

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE [~~DUTIES OF NONPROFIT HOSPITALS~~]

ARTICLE 23. ACCELERATED APPEAL;

EFFECTIVE DATE; SEVERABILITY

SECTION 23.01. (a) The constitutionality and other validity under the state or federal constitution of all or any part of Article 10 of this Act may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, if it is alleged that all or any part of Article 10 of this Act affects the rights, status, or legal relation of a party in a civil action with respect

to any other party in the civil action.

(b) An appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Article 10 of this Act is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) A district court in Travis County may grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 of this Act.

(e) There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 this Act. The direct appeal is an accelerated appeal.

(f) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

(g) An appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 23.02. (a) All articles of this Act, other than Article 17, take effect September 1, 2003.

(b) Article 17 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Article 17 of this Act takes effect September 1, 2003.

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

(d) Except as otherwise provided in this section or by a specific provision in an article, this Act applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act, including an action filed before that date in which a party is joined or designated after that date, is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.

SECTION 23.03. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

President of the Senate

Speaker of the House

I certify that H.B. No. 4 was passed by the House on March 28, 2003, by the following vote: Yeas 94, Nays 46, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4 on May 21, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 4 on June 1, 2003, by the following vote: Yeas 110, Nays 34, 2 present, not voting; and that the House adopted H.C.R. No. 299 authorizing certain corrections in H.B. No. 4 on June 2, 2003, by a non-record vote.

_____
Chief Clerk of the House

I certify that H.B. No. 4 was passed by the Senate, with amendments, on May 16, 2003, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 4 on June 1, 2003, by the following vote: Yeas 27, Nays 4; and that the Senate adopted H.C.R. No. 299 authorizing certain corrections in H.B. No. 4 on June 2, 2003, by a viva-voce vote.

_____
Secretary of the Senate

APPROVED: _____

Date

_____

Governor

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04-9225

CERTIFICATION OF PERSONS AUTHORIZED TO SERVE PROCESS UNDER RULES 103 AND 536(a), TEXAS RULES OF CIVIL PROCEDURE

Rules 103 and 536(a), Texas Rules of Civil Procedure, allow process to be served by any person who is not a party to or interested in the outcome of a suit and who is certified under order of the Supreme Court of Texas. To improve the standards for persons authorized to serve process and to reduce the disparity among Texas civil courts for approving persons to serve process,

IT IS ORDERED:

1. To be certified to serve process under Rules 103 and 536(a), Texas Rules of Civil Procedure, a person must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Court. The application must contain a statement that the applicant has not been convicted of a felony or of a misdemeanor involving moral turpitude. Form applications may be obtained in the Clerk's office or on the Supreme Court website. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas, and a certificate from the director of a civil process service course approved as provided by this Order that the applicant has completed the approved course within the prior year.

2. Applications will be reviewed and approved or rejected for good cause by the Texas Process Service Review Board, appointed by the Court. The Board will notify each applicant of its action, and for each person certified, will post on a list maintained on the Supreme Court website the person's name and an assigned identification number. The Office of Court Administration will provide clerical assistance to the Board.

3. Certification is effective for three years from the last day of the month it issues.

4. Certification may be revoked for good cause, including a conviction of a felony or of a misdemeanor involving moral turpitude. A person suffering such a conviction must immediately notify the Clerk of the Supreme Court and cease to serve process.

5. A person must not represent that he or she is certified under this Order if certification has not been approved, has expired, or has been revoked.

6. The following civil process service courses are approved:

a. the course now offered by the Houston Young Lawyer's Association, for certification for every state court;

b. the course now offered by the Texas Process Server's Association, for certification except for courts in Harris County.

7. A civil process service course that meets the following requirements, similar to the courses approved in paragraph 6, may apply to the Board for approval by the Court:

a. a minimum of 7 hours of monitored instruction;

b. instruction on applicable laws, including the historical development of the law, with emphasis on practical training of proper service and return of service (for example, using sample returns depicting both correct and incorrect returns of service);

c. instruction on a process server's exposure to criminal liability;

d. instruction on unique issues involving family law cases; and

e. basic competence testing upon completion of the course.

8. No organization that offers an approved civil process service course may make membership in the organization a prerequisite to taking the course.

9. The effective date of this Order is February 1, 2005. A person who on that date is shown to have met the requirements for an approved private process server already in place in Dallas County, Denton County, or Harris County, having provided a criminal history record there and having completed a course listed in paragraph 6, is considered to have been certified under this Order, to the extent permitted by paragraph 6, as if the person had complied with this Order on that date.

SIGNED AND ENTERED this 7th day of October, 2004.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Priscilla R. Owen, Justice

Steven Wayne Smith, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

TEXAS PRIVATE PROCESS SERVER APPLICATION
INSTRUCTION SHEET

1. Complete a civil process service educational course approved by the Supreme Court of Texas within a year of filing your Private Process Server Application. Currently, the Court has approved the civil process service courses offered by the Houston Young Lawyer's Association for certification in every state court and the Texas Process Server's Association for certification except in courts in Harris County. Upon completion of the course, the course director should supply you with a certificate of completion.

2. Obtain a card with your fingerprints from your local law enforcement agency. (It is important that you not fold this card!)

3. Submit a written request for your criminal history record to the Texas Department of Public Safety in Austin, Texas. For your convenience, a form request letter is attached. Your form must include your full name, including any aliases, your social security number and driver's license number, if applicable, your date of birth (month, date, and year), your sex and race, and a current mailing address and contact number. You must sign the request!

4. Mail the completed form, your signed fingerprint card, and $15 (check of money order only) to:

   Texas Department of Public Safety
   Crime Records Service
   P.O. Box 15999
   Austin, Texas 78761-5999
   Attention: Correspondence

   If a criminal history record is found, the record, along with the fingerprint card, will be returned to the address listed in your request letter. If no record is found, a notation in red ink will be stamped on the front of the fingerprint card.

5. Complete the attached Private Process Server Application. The application must be sworn and notarized.

6. Mail the application, along with the original of your certificate of completion from an approved civil process server education course and the original of your criminal history record from the Department of Public Safety, to:

   Texas Process Service Review Board
   P.O. Box _____
   Austin, Texas 78711

   IMPORTANT: Your application will not be considered if it does not include: (1) an original criminal history record obtained from the Texas Department of Safety in Austin, Texas, within the preceding 90 days and (2) a certificate from the director of an approved civil process service course that certifies that you have completed the approved course within the prior year.

7. Your application will be reviewed and approved or rejected for good cause by the Texas Process Service Review Board. The Board will notify you whether you are approved or rejected.

8. If you application is approved, you will be assigned a unique identification number. Your name and ID number will be posted on a list maintained on the Texas Supreme Court's website at [url]. You should write this ID number on each return of serve filed with any Texas court.

9. Your approval to serve process, however, is not indefinite. The certification will expire three (3) years after the last day of the month of approval and, upon expiration, your name and identification will be removed immediately from the Court's list of certified process servers on its website.

10. **Importantly, neither the Supreme Court nor the Process Service Review Board will not notify you that your certification has expired; rather, it is your sole responsibility to renew your application.**

11. To renew your application, you must essentially repeat the application process again. You must complete another approved civil process education course within a year of filing your renewal application and obtain a certificate of completion. You must obtain a criminal history record from the Department of Public Safety within 90 days of your renewal. You must submit originals of these two items, along with the Private Process Server Renewal Application, to:

    Texas Process Service Review Board
    P.O. Box _____
    Austin, Texas 78711

12. **Your certification may be revoked at any time for good cause, including a conviction of a felony or of a misdemeanor involving moral turpitude. If you are convicted of a felony or a misdemeanor involving moral turpitude at any time after you are certified as an approved process server, you must immediately notify the Texas Process Service Review Board and cease to serve process.**

SUPREME COURT OF TEXAS
PRIVATE PROCESS SERVER APPLICATION

Name: _____
Last *First* *Middle*

Social Security No.: ____ - ___ - ____ **Driver's License No.:** _____
Issuing State: _____ **Expiration Year:** _____

Date of Birth: ____/____/_____

Home Address: _____
Street Address (No Post Office Boxes)
_____
_____
City *State* *Zip Code*

Mailing Address: _____
Street Address or Post Office Box
_____
_____
City *State* *Zip Code*

Home Phone: ( ) ____ - _____ **Cell Phone:** ( ) ____ - _____
Work Phone: ( ) ____ - _____ **Fax Number:** ( ) ____ - _____
email address: _____

Name of civil process service course you completed: _____
Date of completion: _____

Have you ever been denied a license, permit, bond, or other authorization to do business? _____
If so, please provide a date of denial and explain the circumstances of your denial: _____
_____
_____
_____

Has your authority to serve process ever been denied, terminated, revoked, vacated, suspended or sanctioned? _____ If so, please provide the date this action was taken and the circumstances surrounding the action: _____
_____
_____
_____

Please designate a friend, family member or colleague who could reach you in case of an emergency:

Name: _____ **Relationship**: _____
Last *First* *Middle*

Address: _____
Street Address (No Post Office Boxes)

_____

_____
City *State* *Zip Code*

Home Phone: ( ) ____ - _____ **Cell Phone**: ( ) ____ - _____
Work Phone: ( ) ____ - _____ **Fax Number**: ( ) ____ - _____

email address: _____

I swear, under penalty of perjury, that I have never been convicted of a felony or misdemeanor involving moral turpitude. I understand that, if I am every convicted of a felony or misdemeanor involving moral turpitude, I must immediately notify the Clerk of the Supreme Court of Texas, in writing, and cease to serve process. I swear that I will not serve process in any cause in which I am a party or have an interest in the outcome of the case.

I understand that, if appointed to serve process, I am not an employee of the State of Texas or any of its courts or offices and I will have no claims or rights as such.

I swear that I will notify the Clerk of the Supreme Court of Texas, within 15 days, of any change in the information I have provided above, and I understand that my failure to do so may be grounds for immediate suspension of my process service certification. I further swear that everything in this application is true and correct.

_____
Applicant's Signature

Subscribed to and sworn to me this _____ day of _____, 20__.

_____
Notary Public

IMPORTANT: ***This application will <u>not</u> be considered unless accompanied with: (1) an original criminal history record obtained from the Texas Department of Safety in Austin, Texas, within the preceding 90 days and (2) a certificate from the director of an approved civil process service course that certifies that you have completed the approved course within the prior year.***

SUPREME COURT OF TEXAS
PRIVATE PROCESS SERVER RENEWAL APPLICATION

Process Server ID Number: _____

Name: _____
Last *First* *Middle*

Social Security No.: ____ - ___ - ____ **Driver's License No.:** _____
Issuing State: _____ **Expiration Year:** _____

Date of Birth: ____/____/_____

Home Address: _____
Street Address (No Post Office Boxes)
_____
_____
City *State* *Zip Code*

Mailing Address: _____
Street Address or Post Office Box
_____
_____
City *State* *Zip Code*

Home Phone: ( ) ____ - _____ **Cell Phone:** ( ) ____ - _____
Work Phone: ( ) ____ - _____ **Fax Number:** ( ) ____ - _____
email address: _____

Name of civil process service course you completed: _____
Date of completion: _____

Have you ever been denied a license, permit, bond, or other authorization to do business? _____
If so, please provide a date of denial and explain the circumstances of your denial: _____
_____
_____
_____

Has your authority to serve process ever been denied, terminated, revoked, vacated, suspended or sanctioned? _____ If so, please provide the date this action was taken and the circumstances surrounding the action: _____
_____
_____

Please designate a friend, family member or colleague who could reach you in case of an emergency:

Name: _____ **Relationship**: _____
Last *First* *Middle*

Address: _____
Street Address (No Post Office Boxes)

_____

_____
City *State* *Zip Code*

Home Phone: ( ) ____ - _____ **Cell Phone**: ( ) ____ - _____
Work Phone: ( ) ____ - _____ **Fax Number**: ( ) ____ - _____

email address: _____

I swear, under penalty of perjury, that I have never been convicted of a felony or misdemeanor involving moral turpitude. I understand that, if I am every convicted of a felony or misdemeanor involving moral turpitude, I must immediately notify the Clerk of the Supreme Court of Texas, in writing, and cease to serve process. I swear that I will not serve process in any cause in which I am a party or have an interest in the outcome of the case.

I understand that, if appointed to serve process, I am not an employee of the State of Texas or any of its courts or offices and I will have no claims or rights as such.

I swear that I will notify the Clerk of the Supreme Court of Texas, within 15 days, of any change in the information I have provided above, and I understand that my failure to do so may be grounds for immediate suspension of my process service certification. I further swear that everything in this application is true and correct.

_____
Applicant's Signature

Subscribed to and sworn to me this _____ day of _____, 20__.

_____
Notary Public

IMPORTANT: ***This renewal application will <u>not</u> be considered unless accompanied with: (1) an original criminal history record obtained from the Texas Department of Safety in Austin, Texas, within the preceding 90 days and (2) a certificate from the director of an approved civil process service course that certifies that you have completed the approved course within the prior year.***

REQUEST FOR PERSONAL CRIMINAL HISTORY RECORD

I, _____, am requesting a Personal Criminal History Record in order to
Print or type your name here.
apply with the Supreme Court of Texas to be a private process server. I understand the following information is required in order to obtain this record:

Date of Birth: _____
Month *Day* *Year*

Driver's License Number: _____

Social Security Number: _____ - _____ - _____

Gender: Male ☐ Female ☐
Please check one box.

Race: Asian ☐ Black ☐ Caucasian ☐ Hispanic ☐
Please check one box.

Please mail the original of my personal criminal history record to me at:

_____
Street Address or Post Office Box

_____

_____
City *State* *Zip Code*

The best way to reach me by telephone is at (____) _____.
Print or type your 10-digit phone number here.

Thank you,

_____ _____
Print your name here. *Date (Month, Day, Year)*

_____
Sign your name here.

Complete this form and mail it, along with your signed, unbent fingerprint card and $15 check or money order to:

Texas Department of Public Safety
Crime Records Service
P.O. Box 15999
Austin, Texas 78761-5999
Attention: Correspondence

Vote: 27: 2 not voting

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.

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
Bank of America Plaza
901 Main Street, Suite 6000
Dallas, TX 75202

Re: Retention and Disposition of Exhibits and Depositions

Dear Chip,

Justice Hecht requests that the advisory committee study the retention and disposition of exhibits and deposition transcripts. 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 case one year after final judgment (two years if service was by publication) upon notice to the attorneys of record.

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[1] A copy of one of these orders—currently reprinted in the Texas Rules of Civil Procedure following Rule 14b—is 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.

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 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.

Kind Regards,

Lisa Hobbs

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[2] A copy of a letter to the Court from the Office of Court Administration concerning section 51.205 is attached.

[3] Copies of current schedules DC, pertaining to district clerks, is attached. The schedules pertaining to county clerks and justice and municipal courts are substantially similar, in relevant part, and are available online at http://www.tsl.state.tx.us/slrm/recordspubs/index.html.

[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.

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.

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 463-1648
P. O. BOX 12066, CAPITOL STATION • AUSTIN, TEXAS 78711-2066
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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

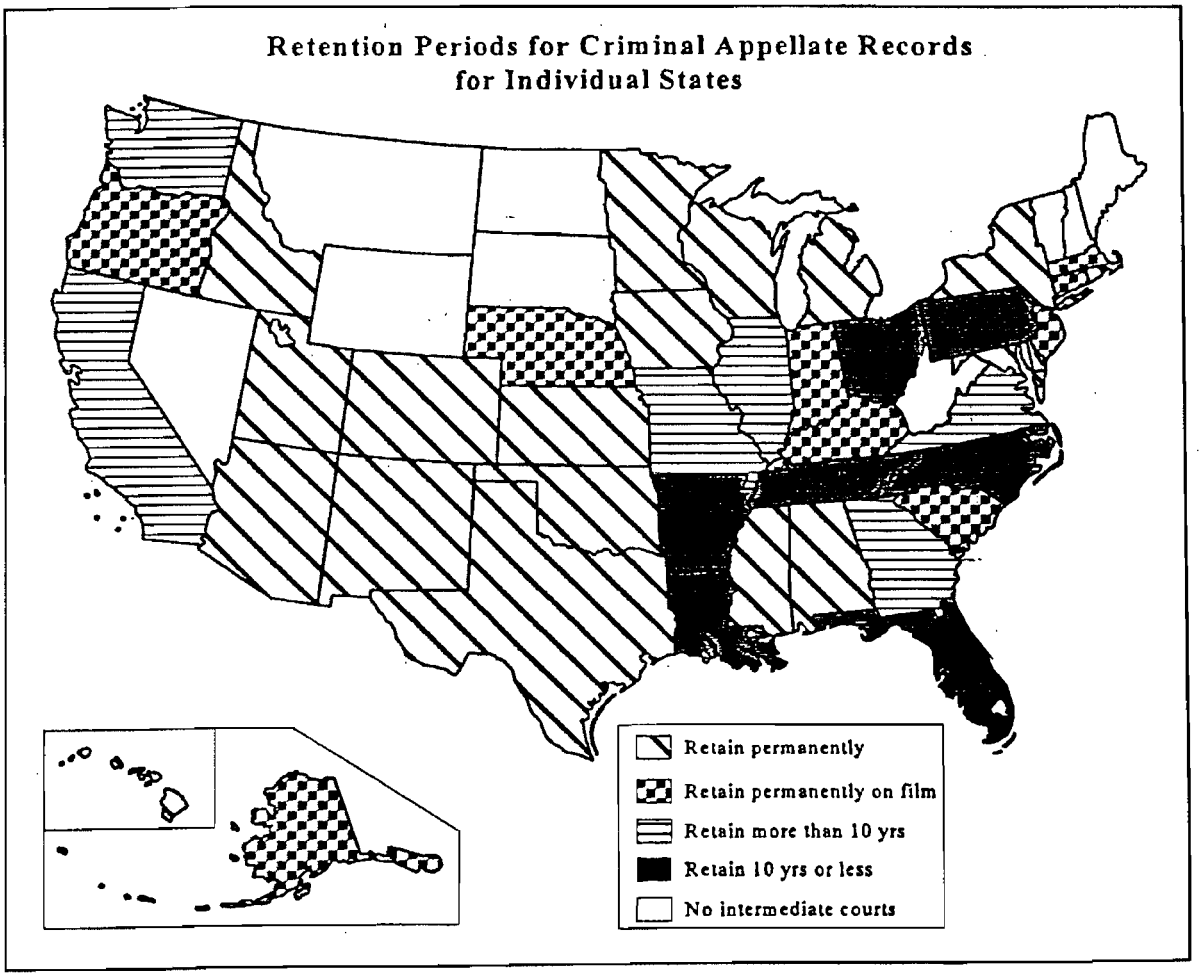
8. Document preparation includes removal of all fasteners, mending of torn pages, visual inspection, sorting of documents and creation of targets.

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 fil district and county courts
(2) motion for leave to file petitio injunction, and other similar of appeals .....
(3) additional fee if the motion ur
(4) motion to file or to extend district or county court .....

Amended by Acts 1997, 75th Leg., ch. 1080, § 1,

Histori

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 insurance or other coverage document may not be policy or other coverage document prov 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

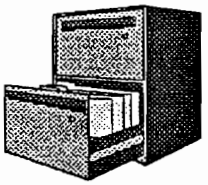
The Problem

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

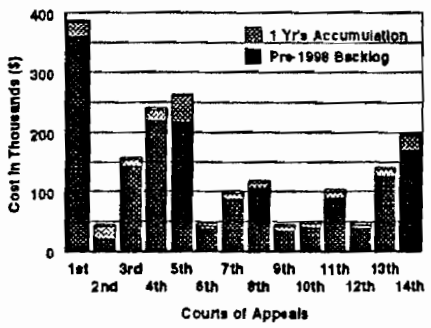
Retention periods for the 10 most populous states

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 archive 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

Effective October 20, 1997

Texas State Library and Archives Commission

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

Copies of this publication are available in alternative format upon request.

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).

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

AGENDA ITEM EIGHT:
PROPOSED RJA 14

- ***TJC Report***
- ***Memo to NLH: Texas version v. Federal version***
- ***Comments Received (through 11/11/04)***
- ***50-State Survey by South Dakota Judicial Administrator on E-Access to Court Records***

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
lisa.hobbs@courts.state.tx.us

November 2, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Rule of Judicial Administration 14

Dear Chip:

After six public hearings over the last year and extensive research, the Texas Judicial Council has submitted their final Report on Public Access to Court Records to the Supreme Court of Texas. The report includes a proposed Rule of Judicial Administration 14.

The Court asks that I submit the report to the Supreme Court Advisory Committee for study. Specifically, the Court requests that the subcommittee on the Rules of Judicial Administration consider the mechanics of the proposed rule, assuming the Court adopts the policy recommendations of the Judicial Council, and present the rule, with any recommendations, to the full committee during the November 12th meeting. In the meantime, the Court will continue studying the policy recommendations of the Texas Judicial Council and, hopefully, report to the subcommittee informally sometime next week.

I apologize for the short time frame. However, as you probably know, there currently are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance. The Court believes this is a matter better addressed by the judiciary than the legislature.

Kindest Regards,

Lisa Hobbs
Rules Attorney

PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -

August 2004

TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX(512) 936-2423
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

August 30, 2004

Chief Justice and Justices
The Supreme Court of Texas

Ladies and Gentleman:

With input from the judiciary, the legislature, and the public, I am pleased to submit to you our report and recommendations *Public Access to Court Case Records in Texas*.

As you know, the Texas judiciary has long recognized the common law right and the presumption of public access to court case records. With recent technological advances, court clerks are now able to increase that accessibility by maintaining and disseminating court documents in an electronic format. Because court case records often contain sensitive and personal information, (e.g., financial documents, social security numbers, medical records), the Texas Judicial Council (Council) created the *Committee on Public Access to Court Records* (Committee) to examine and make recommendations regarding the personal privacy and public safety implications that arise when case records are made available to the public through the internet.

In July 2004, after holding six public hearings, conducting extensive research, and analyzing the relevant federal and state policies, rules, and statutes, the Committee submitted its report and recommendations to the Council for consideration. During our August 2004 public hearing, the Council discussed the work of the Committee, took additional public testimony, amended the recommendations, and adopted this report.

The Council is appreciative to those who have contributed their time and expertise to this important endeavor. Your valuable input and dedication to the judiciary is imperative to the continued success of the Council's initiatives.

Sincerely,

Thomas R. Phillips
Chair, Texas Judicial Council
Chief Justice, Texas Supreme Court

TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 $ TOM C. CLARK BUILDING $ (512) 463-1625 $ FAX(512) 936-2423
P. O. BOX 12066 $ AUSTIN, TEXAS 78711-2066

CHAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

July 16, 2004

Members, Texas Judicial Council

Dear Members,

As chair of the Committee on Public Access to Court Records (Committee), I am pleased to submit to the Texas Judicial Council (Council) the attached report *Public Access to Court Case Records in Texas.*

In November 2003, Chief Justice Phillips appointed this Committee to develop a comprehensive access policy that protects the public's access to court documents and maintains the integrity of the Texas Judicial System. To comply with the charge, the Committee held six public hearings, conducted extensive research, and analyzed the federal and state policies, rules, and statutes. The Committee focused on the privacy and safety implications that arise when electronic adjudicative-type case records are made available to the public on the internet. With input from the legislature, the judiciary and the public, the Committee adopted the following unanimous recommendations:

1. The Texas Supreme Court (Court) should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format for each matter in which this information must be included. The form would include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child. References to the sensitive data in any pleading or party filing would be made in an abbreviated format as specified by the Court. The form would be exchanged among parties and attorneys and be filed at the courthouse but not be made available to the public.

2. The Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While several members recommend that public access to paper documents and electronic documents be treated the same, some of those members acknowledged that there may be some information that is not appropriate for internet publication and that should be made confidential both at the courthouse and on the internet.

3. The Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.

While the Committee strived to reach a consensus on one comprehensive statewide access policy, the members ultimately adopted two alternative approaches for your consideration.

Alternative I: Open Remote Access. Treat remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. Place the following limitations on remote public access:

(1) Only court-created records (e.g., indexes, court calendars, dockets) may be accessible by remote electronic means.

(2) Remote access to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.

(3) Regardless of whether a subscriber-type system is in place, the following case records should be excluded from remote access: (a) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records; (b) pretrial bail or presentence investigation reports; (c) statements of reasons or defendant stipulations in criminal proceedings, including any attachments thereto; and (d) income tax returns.

(4) Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, should be excluded from remote access.

Thank you for the opportunity to participate in this endeavor. I hope that the work and recommendations of the Committee will provide the Council, the Court, and future policymakers with the information needed to make informed decisions that benefit the citizens of Texas.

Sincerely,

Polly Jackson Spencer

Polly Jackson Spencer
Judge, Bexar County Probate Court #1
Chair, Committee on Public Access to Court Records

PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -

August 2004

TEXAS JUDICIAL COUNCIL

COMMITTEE ON PUBLIC ACCESS TO COURT CASE RECORDS

ACKNOWLEDGMENTS

Judicial Council Members

Judge Polly Jackson Spencer, Probate Court No. 1 (San Antonio)
Mr. Lance Byrd, Sendero Energy, Inc. (Dallas)
Senator Robert Duncan, (Lubbock)
Judge Allen Gilbert, San Angelo Municipal Court (San Angelo)
Judge Melissa Goodwin, Justice of the Peace, Precinct 3 (Austin)
Representative Will Hartnett (Dallas)
Ms. Ann Manning, McWhorter, Cobb & Johnson. L.L.P. (Lubbock)
Judge Orlinda Naranjo, Travis County, Court at Law No. 2 (Austin)
Chief Justice Thomas R. Phillips, Supreme Court of Texas (Austin)
Chief Justice Sherry Radack, 1st Court of Appeals (Houston)
Judge Sharolyn Wood, 127th Judicial District Court (Houston)

Non-Council Members

Mr. Charles Bacarisse, Harris County District Clerk (Houston)
Ms. Wanda Garner Cash, Freedom of Information Foundation of Texas (Baytown)
Mr. David Gavin, Department of Public Safety (Austin)
Dr. Tony Reese, University of Texas School of Law (Austin)
Dr. Dianne Wilson, Fort Bend County Clerk (Richmond)
Dr. Ernie Young, University of Texas School of Law (Austin)

Project Staff

Elizabeth Kilgo, Director
Randall Hansen, Judicial Research Specialist

Table of Contents

I. Introduction

The judiciary has long recognized that case file documents, unless sealed or otherwise restricted by statute or court rule, are available at the courthouse for public inspection and copying. The common law right and the presumption of public access to court records "relate to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty, and respect for our legal system."[1] Yet, those access rights have traditionally been subjected to the "practical obscurity" of physically locating documents and information maintained among the voluminous paper files in courthouses located throughout the country. With the emerging use of electronic filing and imaging technology, however, court documents can now be easily accessed, duplicated, and disseminated from locations outside the courthouse. The "[i]ncreased use of the Internet and other powerful databases—both in the judicial system and among the general public—is lowering the barriers to access for parties that have an interest in that information. Personal, often sensitive, information now may be accessed and manipulated from a distance and used in ways not envisioned..."[2]

Fortunately, the judiciary has been mindful of the potential privacy and safety implications associated with modern technologies. *See Whalen v. Roe,* 429 U.S. 589, 605 (1977) ("We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed"); *United States Dep't of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749, 764 (1989) ("Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information..."). Likewise, the judiciary has recognized that the public's right to access court documents may be limited in some circumstances. *See Nixon v. Warner Communications, Inc.,* 435 U.S. 589, 598 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents... It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes"); *Taylor v. State*, 938 S.W.2d 754, 757 (Tex. App.–Waco 1997) (quoting *Nixon*); *Dallas Morning News, Inc. v. Fifth Court of Appeals*, 842 S.W.2d 655, 658-659 (Tex. 1992) (quoting *Nixon*); *United States v. Amodeo*, 71 F.3rd 1044, 1048-1049 (2d Cir. 1995) ("Unlimited access to every item turned up in the course of litigation would be unthinkable. Reputations would be impaired, personal relationships ruined, and businesses destroyed on the basis of misleading or downright false information... Unlimited access, while perhaps aiding the professional and public monitoring of courts, might adversely affect law enforcement interests or judicial performance...").

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[1] See *In re Continental Illinois Securities Litigation*, 732 F.2d 1303, 1308 (7th Cir. 1984).

[2] See *Study of Financial Privacy and Bankruptcy*, U.S. Justice Department, Treasury Department, and Office of Management and Budget (January 2001).

Further, the courts have acknowledged Congress's awareness that the privacy concerns of private citizens may outweigh the need for public access to information maintained by a federal agency. *See Sherman v. Department of the Army,* 244 F.3d 357, 360-361 (5th Cir. 2001) "...Congress created nine exemptions [in the Freedom of Information Act] through which federal agencies may restrict public disclosure of information that would threaten broader societal concerns. *See 5 U.S.C. § 552*(b). The informational privacy interests of private citizens are among those concerns recognized and addressed by Congress in these exemptions.); *Reporter's Comm., 489 U.S. at* 770 ("...the fact that 'an event is not wholly 'private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information' (citations omitted)"). Today, the judiciary faces a challenge presented by advanced technology to promote increased access to court information while preserving the use of our court system as a meaningful avenue to enforce the laws of our country.

II. Committee Charge

In November 2003, Chief Justice Thomas R. Phillips, chair of the Texas Judicial Council, appointed the *Committee on Public Access to Court Records* (Committee) to develop a comprehensive statewide access policy that maintains the integrity of the judicial process while protecting the important interests of public access. Because of the sensitive information contained in many court documents, (e.g., financial documents, social security numbers, medical records, personnel files, proprietary information, tax returns, plea agreements, juror information, victim information, and names of minor children), the Committee was instructed to consider the personal privacy and public safety implications that arise when electronic adjudicative-type case records are made available on the internet.

To comply with the charge, the Committee held six public hearings,[3] conducted extensive research, and analyzed the relevant federal and state policies, rules, and statutes. In July 2004, after receiving input from the legislature, the judiciary, and the public, the Committee submitted its report with recommendations to the Council for consideration.[4] This report: (1) provides an overview of the Committee deliberations; (2) discusses the development of the federal public access policy; (3) provides information about the public access policies implemented in other states; and (4) details the Council's key recommendations.

III. Committee Deliberations

The Need for Guidance

Currently, there are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance from the judiciary or legislature. For example, the Tarrant County District Clerk and the Fort Bend County Clerk both maintain all of their respective court records in an electronic format and provide public access through the

[3] See Appendix A for a copy of the official minutes of each public hearing.
[4] See Judge Spencer's cover letter to this report for the Committee's recommendations.

internet to those documents that are not otherwise sealed by the court or made confidential by statute. While the clerk in Tarrant County provides remote access only to subscribers who apply for a log-in and password and submit a deposit and monthly fee, the clerk in Fort Bend County provides remote access to the public at no charge. In Harris County, the district clerk provides remote access to the court's civil orders for a fee. However, due to concerns expressed by the Houston Family Bar Association, family law orders are available only to practicing family law attorneys who must obtain a log in and password.

After learning about these and other state court websites, the Committee acknowledged the need for uniformity and guidance through the development of a statewide policy that governs the remote electronic distribution of court documents. Without a comprehensive policy in place, the public will likely encounter many variations of remote court access systems that offer different levels of access, service, and user requirements.

Public Trust and Safety

The Committee was concerned about the sensitive and personal information that is scattered throughout a typical case file. Some members believe that without the historical "face-to-face" encounter at the courthouse, the likelihood that information will be retrieved for improper purposes is greatly increased. Internet access to guardianships, conservatorships, custody, or competency proceedings that contain information about an individual's physical, mental, or financial well-being would provide the public with detailed information about those individuals who are most vulnerable in our society. The civil courts monitor children, families, and business dealings. People generally trust the court system to settle their personal and professional disputes. But some members fear that the judiciary may loose that trust if too much information becomes readily available to the public. If engaging in a court process means that an individual's personal information may be broadcast on the internet, then the nature of civil litigation may move from a public to a private forum. Members discussed the possibility that high school students would be able to access the divorce records or custody dispute records of their friend's parents and display them at school. They also recognized that an individual who is not even a party to a suit may be mentioned in a court record and that some parties involved in a court case are not in court on a voluntarily basis. The Committee questioned how the judiciary might protect the identity and location of sexual assault or domestic abuse victims, handle victim statements and sensitive exhibits that are attached to motions or pleadings, ensure the accuracy of the information published, and handle temporary orders, protective orders, and peace bonds that have not been ruled upon.[5]

Some members believe that statutory protections are the appropriate means of protecting such privacy interests.[6] They maintain that if a document is available at the courthouse, it should be made available on the internet. They see no reason to differentiate between court records that are maintained in electronic form rather than paper form. Nevertheless, other members point out that the Texas legislature has not examined the confidentiality of court records in the context of an electronic environment. Consequently, the current statutory scheme does not take into account the posting of electronic court records on local court websites. Likewise, they note that

[5] The Committee was cognizant of the difficulties encountered in the Kobe Bryant rape case where sealed court documents that included the accuser's last name were mistakenly posted to the court's web site.

[6] See Appendix B for a detailed list of those court records that are confidential by Texas statute.

the Texas Legislature has recently placed additional restrictions on public access to otherwise open court records. The 78th Texas Legislature amended the Texas Family Code to provide that in Harris County, all pleadings and documents filed with the court in a suit for the dissolution of marriage are confidential until after the date of service of citation or the 31st day after the suit was filed. Also, an application for a protective order in Harris County is confidential until after the date of service of notice of the application or the date of the hearing on the application, whichever is sooner, and an application for the issuance of a temporary ex parte order is confidential until after the date that the court or law enforcement informs the respondent of the court's order.[7] Further, those members referred to Florida's experience, discussed in Section V below, where public outcry prompted a legislative, and later a judicial, moratorium on remote public access to court records.

Benefits of Remote Access

Given these concerns, some members questioned the rationale for placing *any* case records on the internet for world-wide access and scrutiny. They felt that an institutional change of this magnitude ought to be justified and were curious about the need for any access beyond the traditional method of inspecting court records at the courthouse. Nevertheless, advocates of electronic distribution responded by pointing to the strong public demand, ease of access, the mobility of our society, and the large cost savings associated with both storing and retrieving paper documents. By maintaining all recorded documents since 1838 in an electronic format, the county clerk in Fort Bend County reduced the amount of staff necessary to respond to public records requests. Over the next 5 years, the district clerk in Harris County expects to image over 400 million documents, reducing the court's physical storage requirements from approximately 180,000 to 40,000 square feet. Likewise, parties, attorneys, and the general public benefit from the convenience of accessing case information from a remote location, even on weekends and after regular business hours, without the necessity of traveling to the courthouse.

Identity Theft

The Committee unanimously agreed that certain personal identifiers maintained in both paper and electronic court files, generally for administrative purposes, should not be accessible to the public. Following the lead of the Federal Judiciary and in an effort to address increasing incidences of identify theft, the members deemed as confidential the following personal identifiers in their complete form: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a crime victim in the proceeding; and the name of a minor child. The Committee envisioned the implementation of a confidential "Sensitive Data Form" such that the above personal identifiers would be documented in their complete form, but referred to throughout the case file in pleadings, motions, interrogatories, and other documents in an abbreviated or partially obscured format. Recognizing that it is impracticable, if not impossible, for the courts and court clerks to redact or police the personal or sensitive information that might be filed in a typical case, the Committee agreed that the burden of compliance should fall on the individual filing a court document and should be followed only on a prospective basis.

[7] See House Bill 1391, 78th Regular Session (2003).

Court-Created Documents

The Committee chose to differentiate between court-created documents prepared by the judge or court personnel and party or non-party case filings prepared by someone outside the court. The Committee generally agreed that providing remote access to court-created calendars, dockets, or indexes of cases serves a legitimate public interest by enhancing the public's ability to monitor the functions of the courts. Additionally, such remote access allows the parties and their attorneys to track the status and activities of their respective cases without the inconvenience of contacting court personnel or physically visiting the courthouse. Likewise, the Committee agreed that because the court controls the contents of the court minutes, notices, orders and judgments, remote public access to those documents should not significantly impair individual privacy interests. However, the Committee noted that the state judges and court personnel should be cognizant of the privacy implications associated with information provided in court-created documents that may be published on the internet. Further, state judges and court personnel should minimize and avoid the inclusion of unnecessary personal or sensitive information in any court created document.

Party and Non-Party filings

As discussions moved beyond personal identifiers and court-created records, the Committee focused on the contents of party and non-party filings. The members revisited the public safety and privacy implications associated with the electronic publication of extremely sensitive information, including, but not limited to: medical records, tax returns, divorce proceedings, harassment proceedings, proprietary business information, asset inventories, pre-sentence investigation reports, search warrants, arrest warrants, and exhibits depicting nudity, violence or death. The Committee questioned whether people will continue to use and trust the court system to settle their personal and professional disputes knowing that the information contained in the case file may be published on the internet. Likewise, the members discussed the court's lack of control regarding the contents of those documents that are filed by the parties and non-parties in a case. Given the Committee's desire to maintain broad public access while ensuring privacy, personal safety, and public confidence, the members considered some electronic protections including, but not limited to: requiring users to obtain a log-in and password; charging a user or subscriber fee; requiring that any data disseminated by the court not be sold or otherwise distributed to third parties nor be used for commercial or solicitation purposes; and prohibiting the bulk distribution of electronic records. For additional guidance, the Committee reviewed and examined the electronic access policies established by the Federal Judiciary and the judiciaries in other states.

IV. Federal Policy Development

When the United States Judicial Conference examined public access to electronic federal court records, the Administrative Office of the United States Courts (AOUSC) made several assumptions to guide policy development including the following:[8]

- There is a strong legal presumption that documents in case files, unless sealed, are public records available for public inspection and copying;

[8] See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 8-9, (1999).

- The presumption of unrestricted public access to case files promotes public understanding of and confidence in the court system;
- The transition to electronic case files raises important legal and policy issues that are not addressed explicitly in current law or judiciary access policies;
- The traditional reliance on litigants to protect their privacy interests through protective orders or motions to seal may be inadequate to protect privacy interests;
- Access rights, whether based on the common law or on the Constitution, are not absolute. The inherent authority of the judiciary to control the dissemination of case files may justify restriction on access to electronic case files to protect privacy;
- Making case files available on the internet may lead to the dissemination of information that would harm the privacy interests of individuals. It also may deter litigants from using the courts to resolve their disputes; and
- The judiciary has a special custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of case files. Like other government entities that collect and maintain sensitive persona information the judiciary must balance the public interest in open court records against privacy and other legitimate interests of nondisclosure.

The AOUSC also presented several national policy alternatives on access to electronic case files.[9]

1. Extend current open access policies to cover electronic case files. This approach would follow the belief that electronic case files should be treated the same as paper files. There would be no restriction on remote access. Litigants and others would have to assert their privacy interests with appropriate motions.

2. Review the elements of the "public" case file to better accommodate privacy interests. This approach would evaluate the need to include specific information or documents in the public case file, whether in paper or electronic format. A new definition of the "public case file" would need to be developed to better accommodate privacy interests. Like alternative #1, this approach assumes that the entire public case file would be made available electronically without restriction. Private or sensitive information would be excluded from the public case file, whether in paper or electronic format.

3. Provide limited access to certain electronic case file information to address privacy concerns. Under this approach, judicial leaders would limit remote electronic access by identifying categories of case file information or specific documents that may implicate privacy concerns. Remote electronic access might be limited depending on the level of access granted to a particular individual. For example, judges and court staff would have unlimited access, while litigants and attorneys would have unrestricted access to the files relevant to their own cases. The public would have remote electronic access to a subset of the entire case file that includes pleadings, briefs, orders, and opinions. This

[9] See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 9-10, (1999).

approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person.

In September 2001, the Judicial Conference adopted a policy regarding privacy and public access to electronic case files as follows:[10]

- General Principles:

  1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.
  2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the internet.
  3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.
  4. Except where otherwise noted, the policies apply to both paper and electronic files.
  5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.
  6. The availability of case files at the courthouse will not be affected or limited by these policies.
  7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

- Civil Cases: Documents in civil case files should be made available electronically to the same extent that they are available at the courthouse except that Social Security cases should be excluded from electronic access and certain "personal data identifiers" should be modified or partially redacted by the litigants. These identifiers are social security numbers (only the last four digits should be used), dates of birth (only the year should be used), financial account numbers (only the last four digits should be used) and names of minor children (only the initials should be used).
- Criminal Cases: Public remote electronic access to criminal case documents is prohibited.
- Bankruptcy Cases: Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; Section 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended to allow the court to collect a debtor's full Social Security number but display only the last four digits.
- Appellate Cases: Appellate case files are to be treated the same as lower level cases. The *case file*, whether electronic or paper, is defined as the collection of documents officially filed by the litigants or the court in the context of litigation, the

[10] See *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* (2001).

docket entries that catalog such filings, and transcripts of judicial proceedings. The term generally does not include non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff.

The federal courts provide public access to electronic files, both at the courthouse and beyond the courthouse, through a web-based system, the Public Access to Court Electronic Records (or ``PACER") system, that contains both the dockets (a list of the documents filed in the case) and the actual case file documents. Users must open a PACER account and obtain a login and password which creates an electronic trail.

In March 2002, the following two modifications to the policy were adopted: (1) remote public access became permissible for "high profile" criminal case file documents in cases where demand for copies of documents places an unnecessary burden on the clerk's office, the parties have consented to such access, and the presiding judge finds that such access is warranted by the circumstances; and (2) a pilot project was created to allow several courts to return to the level of remote public access to electronic criminal case files that they provided prior to the Conference adoption of the policy restricting such access. In September 2003, the Conference amended the prohibition regarding criminal cases to permit electronic access to criminal cases. As in civil cases, certain "personal data identifiers" should be modified or partially redacted by attorneys and litigants in criminal cases.

V. State Court Policy Development

a. Model Policy

In an effort to provide guidance to and consistency among state judiciaries, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) issued the CCJ/COSCA Guidelines in August 2002.[11] The project "Developing a Model Written Policy for Access to Court Records," was funded by the State Justice Institute and staffed by the National Center for State Courts and the Justice Management Institute. The model policy provides a framework from which judicial leaders can develop their own public access policy. The CCJ/COSCA Guidelines are based on the following premises:

- Retain the traditional policy that court records are presumptively open to public;
- As a general rule access should not change depending upon whether the court record is in paper or electronic form, although the manner of access may vary;
- The nature of certain information in some court records is such that remote electronic public access may be inappropriate, even though public access at the courthouse is maintained;
- The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge; and
- Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

[11] See *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*, Martha Wade Steketee, Alan Carlson (Oct. 18, 2002).

The CCJ/COSCA Guidelines do not require state courts to convert their court records to electronic form or to make records available remotely. In developing a public access policy, the CCJ/COSCA Guidelines suggest that state judiciaries examine the effectiveness of existing state statutes or rules and focus on a policy that will provide guidance to courts as their technology is upgraded.

b. Other State Policies

Several states, including Colorado, Idaho, and Missouri, have enacted public access policies for electronic records in the context of a database or case management system and generally allow remote electronic access to the calendar, register or actions, and general docket-type information rather than to the actual party and non-party case filings. For example, in Colorado, only data elements contained in the Integrated Court On-Line Network database and approved by the *Public Access Committee* may be released electronically.[12] Those records generally include case numbers, court, division, primary party name(s), date of birth, attorney, calendar events, bonds, judgments, charges case dispositions, and sentences for felony, misdemeanor, traffic, civil and domestic relations cases. Other states, including Arizona, California, Florida, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New York, Utah, Vermont, Washington, and Wisconsin, have adopted or continue to debate policies to address the personal privacy and personal safety implications associated with remote electronic access to case records.

Arizona

In August 2000, the chief justice created the *Committee to Study Public Access to Electronic Court Records* to develop policy recommendations regarding public access to electronic judicial records. Arizona Supreme Court Rule 123, which governs judicial records policy, prohibits public access to financial account and social security numbers appearing in administrative files and bars disclosure of the following information contained in case records: any record protected by law, certain juvenile treatment records including dependency, adoption, severance and related proceedings; adult criminal history, medical and psychiatric records, and certain probation and pretrial services records. Most identifying juror information including phone and address is confidential.

In October 2002, the committee issued recommendations which provide that remote electronic public inspection would not be available for certain case records and data elements (presentence reports; criminal case exhibits unless attached to a filing; petitions for orders of protection or injunctions against harassment; victims' names; and docket and calendar information on unserved orders of protection or injunctions against harassment). The parties' residential addresses would not be displayed on Web sites offering basic case information from a court's case management system. The committee suggests that the Arizona Supreme Court should develop a confidential form for sensitive data that would be available for public inspection at the courthouse only on a showing of good cause, and also educate judges, attorneys, and the public that case records are publicly accessible and may be available on the internet. The form would contain financial account numbers, social security numbers, victims' addresses and phone numbers and names of juvenile victims. The parties would be responsible for omitting or redacting such confidential information in documents filed with the court. Also, to determine the

[12] See Chief Justice Directive 98-05; Public Access Policy 98-01 through 98-03.

costs and benefits of offering remote electronic access to state court criminal case files, the committee recommends that the judicial department conduct a three year pilot project that would provide fee-based remote access to users who register with the court for a log-in and password. Remote electronic access would be afforded on a case-by-case basis and bulk data would not be electronically accessible on the internet.

The Arizona Supreme Court has formed a workgroup to review and refine the committee's recommendations.

California

California Rules of Court 2070-2077 are intended to provide the public with reasonable access to electronic trial court records, while protecting privacy interests. They are based on the conclusion of the *Court Technology Advisory Committee* that electronic records differ from paper records in three important respects: (1) ease of access, (2) ease of compilation, and (3) ease of wholesale duplication. The rules are also based on the committee's conclusion that the judiciary has a custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of electronic case files. They are not intended to create a right of public access to any record the public is not otherwise entitled to access. The rules provide that to the extent feasible, courts must provide electronic access both remotely and at the courthouse to the registers of action, calendars, indexes, and all civil case records except that remote electronic access is not available for the following proceedings: family code; mental health; juvenile court; criminal; guardianship or conservatorship; and civil harassment.[13] Likewise, certain data elements must be excluded from the calendar, index, and register of actions: social security numbers; financial information; arrest warrant information; search warrant information; victim information; witness information; ethnicity; age; gender; government-issued identification numbers; driver's license numbers; and dates of birth.

Electronic case record access is available on a *case-by-case basis* when the record is identified by the number, the caption, or the name of a party. A court may provide *bulk distribution* of only its calendar, register of actions, and index.[14] If an electronic record becomes inaccessible by court order or operation of law, the court is not required to take action with respect to any copy that was made by the public before it became inaccessible. Users must consent to access the records only as instructed by the court and must consent to the court's monitoring such access. Contracts with vendors to provide public access must be consistent with the policy and must require the vendor to protect the confidentiality of court records as required by law or court

[13] See *Public Access to Electronic Court Records*, Court Technology Advisory Committee, pp. 23-24 (Oct. 2001)("In drafting the rules, the committee considered restricting remote access to specific data elements in a court record, such as a party's financial account numbers, but concluded that the problem with this approach is one of practical implementation: it would require someone in the clerk's office to carefully read each document filed with the court to ascertain whether there are any matters in the document that need to be redacted, and might subject the courts to liability for failing to redact all confidential data elements. Therefore, the committee concluded that the more workable approach is to limit remote electronic access to certain categories of cases....").

[14] *Id.* at 19 (The committee was concerned about media requests for the court's entire database, which includes confidential information. To comply with such requests, court personnel would have to review each record in the database and redact all confidential information from the records – "a costly, time-consuming, and perhaps impossible task.").

order and must specify that the court is the owner of the records with the exclusive right to control their use. To the extent feasible, specifies minimum data requirements for electronic court calendars, indexes, and registers of action.

In February 2004, the California Judicial Council issued an interim rule which will sunset at the end of 2004 to provide for remote electronic access to state court records in high profile criminal cases where there is extraordinary demand that significantly burdens court operations. Trial courts should redact personal information including social security numbers, home addresses and telephone numbers, and medical and psychiatric records prior to posting them on the internet.

Florida

In April 2002, the Judicial Management Council submitted to the Florida Supreme Court a preliminary report which included a recommendation that the Supreme Court take steps to keep confidential and sensitive information secure from inappropriate disclosure through the implementation of a uniform regulation. In June 2002, the Florida Legislature created a 21-member *Study Committee on Public Records* to address electronic assess to court records and established a temporary moratorium on unrestricted electronic access of court records that prohibited any clerk from placing on a publicly available internet website an image or copy of an official record of (1) a military discharge; (2) a death certificate; or (3) a court record relating to matters of cases governed by the family law, juvenile, or probate rules. The committee issued its final report in February 2003 and called upon the Florida courts to minimize the collection of unnecessary personal and identifying information and to determine to what extent information should be accessible over the internet.

In November 2003, the Florida Supreme Court issued an administrative order creating the *Committee on Privacy and Court Records* to recommend comprehensive policies to regulate the electronic release of court records.[15] The order specifies that the committee consider a plan that includes, at a minimum: requirements as conditions of release; a process for a clerk to request and gain release approval; categories of records that may not be electronically released; and procedures for ensuring that any electronic release system comply with applicable law, rules, and orders. The committee must also initiate strategies to reduce the amount of personal and sensitive information that unnecessarily becomes part of a court record and recommend categories of information that are routinely included in court records that the legislature should consider for public access exemptions. The court further ordered that, effective immediately, no court record may be released in electronic form excluding: a court record which has become an "official record" (i.e., court orders, property records, liens and similar documents); a court record transmitted to a party or an attorney of record; a record transmitted to certain governmental agencies or agents; a record that has been solitarily and individually requested, has been manually inspected by the clerk, and contains no confidential or exempt information; a record in a case which the chief justice has designated as a significant public interest after manual inspection for confidential information; progress dockets (limited to case numbers; case types; party names, addresses and dates of birth; names and addresses of counsel; lists of indices of judgments, orders, pleadings, motions, notices; court events; clerk actions and dispositions provided that no confidential information is released); schedules and calendars; records

[15] See Supreme Court of Florida Administrative Order No. AOSC03-49, Committee on Privacy and Court Records.

regarding traffic cases; appellate briefs, orders and opinions; and court records inspected by the clerk and viewed via a terminal within the office of the clerk, provided no confidential information is released.

Indiana

Based on the recommendations of the *Task Force on Access to Court Records*, in February 2004, the Indiana Supreme Court adopted revisions to Indiana Administrative Rule 9 to take into account public access to electronic court records. The revised rule generally follows the CCJ/COSCA Guidelines. Information already made confidential by Indiana statute includes records regarding adoptions, AIDS, child abuse, drug testing, grand jury proceedings, juvenile proceedings, paternity, presentence reports, marriage petitions w/o consent for underage persons, arrest/search warrants, indictments/information prior to return of service, medical, mental health, or tax records, juror information, protection orders, mediation proceedings, and probation files. In addition to those records made confidential by federal law, state statute or court rule, the rule excludes from public access social security numbers; addresses, phone numbers, dates of birth and other personal identifiers for: witnesses or victims in criminal domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings; account numbers, credit card numbers and PINs; and orders of expungement in criminal or juvenile proceedings. While bulk distributions are permitted, all such requests must go through the administrative office of the courts.

Maryland

In March 2001, the Court of Appeals Chief Judge Robert M. Bell appointed the *Committee on Access to Court Records* to study the court's system of public access to court records and, in particular, to electronic court records. Records that are confidential by statute or rule include records regarding adoptions, guardianships, certain juvenile proceedings, certain marriage applications, certain abuse/neglect records, HIV records, certain search/arrest warrants, presentence investigation reports, grand jury information, certain medical or psychological records, tax returns, and social security numbers.

In December 2003, the committee issued its final report and recommendations which suggested in large part the continuation of the original policy that court records generally remain open to the public.[16] The committee concluded that the information currently available in electronic form, excluding some pilot programs, consists of docket sheets that contain identifying party information and describe case events such as filing and disposition, and that this information does not warrant protection beyond the current protections provided by statute and case sealing orders. The committee noted that as case files become computerized, the nature of some information in case files (e.g., bank acct numbers, credit card numbers, and medical records) is such that remote access may harm individuals or businesses, and the court may then want to consider whether the existing protections are adequate.[17]

In March 2004, after further examination and public comment, the Court of Appeals of Maryland adopted Title 16, Chapter 1000 of the Maryland Rules, Access to Court Records, which are based in part on the committee's recommendations and create a general presumption of

[16] See Maryland's *Report of the Committee on Access to Court Records*, pg. 6 (2002).
[17] *Id.* at 11.

openness.[18] The rules generally treat paper and electronic records the same. Records custodians that choose to provide access to electronic documents are encouraged provide the same level of access as is available at the courthouse, but are allowed to limit the manner and form of electronic access based upon system capabilities.[19] The Rules recognize the public access limitations established by statute or rule and generally provide that all other exclusions must be by court order after examination by a judge on a case-by-case basis.[20]

Massachusetts

The Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web, May 2003, governs public access to docket and calendar information that is or will be maintained in computerized case management systems. At this time, the policy does not allow documents submitted to the courts in connection with a case to be published on the internet. The Chief Justice for Administration and Management (CJAM), the Departmental Chief Justices, and others found that the ramifications of publishing information on the web are qualitatively different from those of making information available at the courthouse. The policy allows for publication of certain case information that enables litigants and attorneys to check the status and scheduling of cases in which they are involved. The following principles are in place to guide publication of trial court (and generally appellate court) case information on the internet:

- Provide some information about every case, except those that are categorically excluded as permitted below;
- For civil cases, all basic case information should be provided including the case caption, names of the parties, docket number, judge, court, case type, attorney information, past and future calendar events, and docket entries (unless excluded below);
- The same information provided in civil cases should be provided in criminal cases except that the defendant's name should not be disclosed and information regarding the offenses should be available;
- Impounded cases should include the case docket number, indicate the case is impounded, give information about the progress of the case, the name of the judge, and the attorneys who appear in the case. Any information that might identify the parties or the type of case, including docket entries, should be excluded;
- Case information that is excluded from public access by statute, case law, or court rule should not be included on the internet;
- Personal identifying information, including an individual's address, telephone number, social security number or date of birth, should not appear on a court web site; and
- The CJAM, in consultation with the Departmental Chief Justices, and subject to Supreme Judicial Court (SJC) approval, may decide that certain categories of cases or information or certain docket entries should be excluded or sanitized (provided that it is made clear that the docket entry available on the web site is not the same as the docket entry available at the courthouse).

The public may access case information located on a court web site through one or more of the following searches (subject to any CJAM amendments):

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[18] See Maryland Rule 16-1002. General Policy.

[19] See Maryland Rule 16-1008. Electronic Records and Retrieval.

[20] See Maryland Rule 16-1006. Required Denial of Inspection – Certain Categories of Case Records and Maryland Rule 16-1007. Required Denial of Inspection – Specific Information in Case Records.

- Civil cases may be searched by docket number, party name, judge, attorney, calendar event date, court and type of case;
- Criminal cases may be searched by docket number, judge, attorney, calendar event date, and court (searches by the name of the defendant, a victim or a witness is not permitted); and
- Impounded cases may be searched by docket number, judge, attorney and court (searches by party name, victim name, or witness name is not permitted).

Minnesota

In January 2003, the Minnesota Supreme Court established the *Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* to review the Rules of Public Access to Records of the Judicial Branch (Access Rules). In June 2004, the advisory committee issued its final report and recommendations. Among the several alternatives considered by the advisory committee were the following two approaches: (1) allow internet access to all court records that are accessible to the public in paper format, and make any necessary adjustments to both paper and internet records, or (2) try to retain the same level of public access to paper records and publish only a limited amount of those records on the internet. Noting that the "courts that have simply begun posting all public records on the internet have encountered numerous problems and have had to pull back and reconsider their policy in light of privacy concerns raised by persons identified in the records. The committee agreed that the potential for damage to individuals necessitates a careful approach."[21] Therefore, the advisory committee chose the second "go-slow" approach to providing more remote access to information. While the recommendations encourage courts to provide remote electronic access to the register of actions, calendars, indexes, judgment docket, or judgments, orders, appellate opinions, and notices prepared by the court, all other electronic case records would not be made remotely accessible. "The rule limits Internet access to records that are created by the courts themselves as this is the only practical method of ensuring that necessary redaction will occur."[22] Further, the public would not be granted remote access to the following data elements with regard to their family members, jurors, witnesses, or victims of a criminal or delinquent act: social security numbers and employer identification numbers; street addresses; telephone numbers; financial account numbers; and in the case of a juror, witness or victim, information that would provide for the identify of the individual.

Case records that are protected from public access under the current Access Rules include: domestic abuse records, until a temporary court order is executed or served upon the respondent; child protection records; court services records that are gathered at the request of the court to determine an individual's need for counseling or treatment, to assist in assigning an appropriate sentence or disposition, to provide the court with a recommendation regarding custody, and to provide the court with a psychological evaluation; criminal case records made inaccessible pursuant to the rules of criminal procedure; juvenile case records; records protected by statute – abortion, adoption, artificial insemination, commitments, compulsory treatment, wiretap warrants, identity of juvenile victims of sexual assault, presentence investigation report, custody

[21] See *Final Report, Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch*, p. 18 (June 2004).
[22] *Id.* at 42.

proceedings, juvenile court records, paternity proceedings, wills deposited for safekeeping, and juror data; and civil case records protected by order of the court.

Missouri

Missouri Supreme Court Operating Rule 2 governs public access to judicial records. All court records are presumed to be open to any member of the public for inspection or copying. The policy is not applicable to records made confidential pursuant to statute, court rules or court order. The rule does not create an obligation to make data available electronically. Data that identifies a person is available on a case-by-case basis. Electronic public indexes will be available by case number, file date, party name and calendar date, and may contain the case title, case type and status. The rule provides that electronic records that identify a person can include only the following data elements for civil cases, unless confidential by statute or rule: attorneys' addresses and names; file date and calendar dates; case number and type; date of birth; disposition type; docket entries; judge; judgment or appellate decision/mandate date; party address and name; and satisfaction of judgment date. Likewise, electronic records that identify a person can include only the following data elements for criminal cases, unless confidential by statute or rule: appellate mandate date; appellate opinion; attorneys' addresses and names; file date and calendar dates; bail amount; charges; case number and type; date of birth; disposition type; docket entries; defendant address and name; disposition type; finding and date; judgment and date; sentence and date; judge and law enforcement agency; offense tracking number; violation code and description. Note that case records containing social security numbers cannot be disseminated and court personnel cannot expunge or redact those numbers that appear in case records.

New York

In February 2004, the *Commission on Public Access to Court Records* submitted its report and recommendations to the Chief Judge of the State of New York.[23] The committee followed the lead of the Federal Judiciary with its recommendation that paper and electronic be treated the same and that no public case record should include full: social security numbers (use last 4 digits only), financial account numbers (use last 4 digits only), names of minor children (use initials only), and birth dates of any individual (use the year only). Compliance with these provisions lies with attorneys or self-represented litigants. The committee also recommended that in implementing internet access to case records, priority should be given to court calendars, case indices, dockets and judicial opinions. Other case records, such as pleadings and papers filed by the parties, should be made available on the internet on a pilot basis, in part, to test the policy and the need to exclude or redact certain data elements from filed documents. The recommended principles should apply prospectively. Information already confidential by statute includes records regarding: matrimonial actions, child custody, visitation and support; family court proceedings, abuse, neglect, support, custody & paternity; identity of victims of sexual offenses; HIV information; pre-sentence reports and memoranda in criminal proceedings; and sealed documents.

The committee also suggested that the UCS should determine whether additional rules should be adopted to assure compliance from filing attorneys, and consider what steps may be necessary to

[23] See *The Report to the Chief Judge of the State of New York*, Commission on Public Access to Court Records (February 2004).

assure compliance by self-represented litigants; provide education to attorneys, litigants and judges concerning public access to court records over the internet; determine how to protect at-risk individuals such as victims of domestic violence and stalking from being identified and located by use of their home/work phone numbers and addresses in public court records; and adopt rules regarding earlier created case records that may be placed on the internet.

Utah

In January 2003, the Utah Judicial Council appointed the *Committee on Privacy and Public Court Records* to consider the policies favoring public access to court records and the policies favoring privacy, and to recommend the classification of records as public or not public. The Committee has been asked to closely examine access to court records through electronic means such as the internet. The Committee was also asked to assess the current classification scheme regarding public access to judicial records which is set forth in 4-202.02 of the Utah Rules of Judicial Administration as follows:

- public;
- private – divorce records, driver's license histories, records involving commitment, juror information;
- controlled – records containing medical, psychiatric, or psychological data; custodial evaluations or home studies; presentence reports; the official court record of court sessions closed to the public and any transcript of them; any record the judicial branch reasonably believes would be detrimental to the subject's mental health or safety if released; any record reasonably believed to constitute a violation of normal professional practice or medical ethics if released;
- protected – personal notes or memoranda of a judge or person charged with a judicial function, drafts of opinions or orders, memoranda by staff)
- juvenile court legal records;
- juvenile court social and probation records;
- sealed – adoption case files; and
- expunged.

In general, the public may access public records, while the protected records and expunged records are exempt from disclosure. Sealed records may only be disclosed upon court order. The other categories may be disclosed to certain individuals involved in the proceedings or court personnel as specified.

The Utah courts currently provide free internet access to appellate opinions and dockets, general docket information maintained in the district court's case management systems, court rules and forms, reports and publications, and other information. More detailed district court case information is available through a subscription service. Rule 4-202.12 governs access to electronic data elements and provides that data elements other than public records will not be made available. Electronic records from which a person can be identified will be available on a case-by-case basis. Select data elements, known as indexes, which are limited to the amount in controversy, case number, case type, judgment date and amount, party address, party name assist the public in finding cases of interest and may be reported in bulk. The rule states that the judiciary is not responsible for incomplete or erroneous information and sets forth a process for requests.

Vermont

The Supreme Court of Vermont approved the Rules for Public Access to Court Records during the October 2000 Term. The rules provide that all case and administrative records of the Judicial Branch are open to any member of the public for inspection or to obtain copies except that the public does not have access to the following records: adoptions; sterilization proceedings; grand jury; juvenile; a will deposited for safekeeping; medical or treatment records; mental evaluations in probate court; juror information; social security numbers; transcripts; involuntary commitment; mental health/retardation; presentence investigation reports; DNA records in family court; discovery records unless used by a party; denial of a search warrant; issuance of a search warrant until the date of the return; supplemental financial information with application for an attorney; guardianship proceedings if the respondent is not mentally disabled; records filed regarding the initiation of a criminal proceeding, if the judicial officer does not have probable cause to believe an offense has been committed; civil filings prior to service or disposition; complaint and affidavit filed in abuse prevention proceedings until the defendant has an opportunity for a hearing; records of criminal proceedings involving adult diversion programs; evidence introduced to which the public does not have access; any other record to which public access is prohibited by statute.

The presiding judge by order may grant public access to a case record or seal from public access a record or redact information from a record upon a showing of good cause and exceptional circumstances. Affected parties have a right to notice and a hearing before such order is issued, except for temporary orders. To the extent possible, physical case records that are not public, must be segregated from records to which the public has access. Judicial branch records kept in electronic form must be designated as open or closed in whole or in part. The rules should not be construed to permit online access to any case record. VRCP 5, VRCRP 49 and VRPP 5 require parties to redact social security numbers from any papers they file unless the court has requested the number.

In June 2002, the court approved the Rules Governing Dissemination of Electronic Case Records which provides that except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records. The rule permits access to docket-type information from case management databases and compilation prepared by the court system, with the exception of social security numbers, street addresses, telephone numbers, and personal identification numbers, including financial account numbers and driver's license numbers.

Washington

Washington's Judicial Information System Data Dissemination Policy governs access to records in the statewide Judicial Information system (JIS), a case management database. It provides that direct downloading of the database is prohibited except for the index items. Privacy protections accorded by the Legislature to records held by other state agencies are to be applied to requests for computerized information from court records, unless admitted in the record of a judicial proceeding, or otherwise made a part of a file in such proceeding, so that the court computer records will not be used to circumvent such protections. Access is not permitted to effectuate lists of individuals for commercial purposes or to facilitate profit expecting activity. Electronic

records are to be made available on a case-by-case basis and a court-by-court basis. All access to JIS information is subject to the availability of data, specificity of the request, potential for infringement of personal privacy created by release, and potential disruption of the internal ongoing business of the courts. Although, it provides that compiled reports are generally not disseminated if they contain information which permits a person, other than a judicial officer or attorney, to be identified as an individual, this section of the policy has been informally abrogated and will be formally superseded if GR 31, described below, is adopted. The privacy and confidentiality policies are as follows:
records that are sealed, exempted or otherwise restricted by law or court rule may not be released except by court order and confidential information regarding individual litigants, witnesses, or jurors that is collected for internal administrative operations of the courts will not be disseminated, including, but not limited to, credit card and PIN numbers, social security numbers, residential addresses and phone numbers.

General Rule 22 governs public access to family law records, whether maintained in paper or electronic form. The rule requires the parties to record personal identifiers including social security numbers, driver's license numbers, telephone numbers, and a minor's date of birth on a Confidential Information Form. Similarly, parties must attach a Financial Source Document Cover Sheet to certain financial records which are then automatically sealed by the court. Financial source documents include income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other similar records.[24]

Washington's Judicial Information System Committee has proposed a new rule, General Rule 31, which covers access to court (i.e., case, but not administrative) records regardless of form. It would generally place no limits on internet access to non-confidential court records. Parties must refrain from using , or must redact, the following personal identifiers from pleadings filed electronically or on paper - social security numbers (use last 4 digits if necessary) names of minor children (use initials) and financial account numbers (last 4 digits only). Compliance rests solely with the parties and attorneys. The rule would allow for bulk distributions, but bans commercial solicitation. The rule also allows access to closed records by public purpose agencies for scholarly, governmental or research purposes where the identification of individuals is ancillary to the purpose of the inquiry. On October 7, 2004, the Washington Supreme Court will consider GR 31 for adoption. If it is adopted, it will supersede much of the Data Dissemination Policy.

Wisconsin
In April 2003, the Wisconsin courts released an internet access policy for case management information on individual cases. The Policy on Disclosure of Public Information Over the Internet permits free remote access to non-confidential case documents. The following records are not available on the internet: closed records that would not otherwise be accessible by law because of specific statutory exceptions such as juvenile court records, guardianship proceedings, and other such case types or records; an expunged criminal conviction (court not responsible for access prior to expunction); the "day" from the date of birth field for non-

[24] See Appendix C for a copy of Washington's Confidential Information Form and Financial Source Document Cover Sheet.

criminal cases; the driver's license number in traffic cases; and the "additional text" or data fields that often contain the names of victims, witnesses and jurors.

The policy provides a disclaimer regarding updates or corrections and states that the WCCA is not responsible for notifying prior requesters of updates. The WCCA Oversight Committee is currently charged with evaluating whether to provide access to electronically filed, scanned, or imaged documents.

VI. Recommendations

After discussing the work of the Committee, examining the federal and state court remote access policies, reviewing the relevant Texas statutes, and considering the public input and privacy concerns, the Council adopted the following recommendations:

1. **Sensitive/Confidential Data Form. The Supreme Court should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.**

   - The form should include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child.

   - Unless otherwise ordered by the court, any party filing a pleading or other document with the court should not include any sensitive data in such pleading or document, whether filed on paper on in electronic form, regardless of the person to whom the sensitive data relates.

   - Unless otherwise ordered by a court, if reference to any sensitive data is necessary in a pleading or other case record filed with the court, the filing party should refer to that sensitive data as follows: if a social security number or financial account number of an individual must be included in a case record, only the last four digits should be used; if the involvement of a minor child must be mentioned in a case record, only that child's initials should be used; and if a date of birth must be included in a case record, only the month and year should be used. However, the Committee recommends further study regarding the reference to a date of birth or to the name of a minor child.

   - The responsibility for omitting or redacting from those documents filed with the court the sensitive data identified above should rest solely with counsel

and the filing party. The court or court clerk should have no obligation to review each pleading or other filed document for compliance.

- Unless otherwise ordered by the court, the form should not be accessible to the general public either remotely or at the courthouse.

- Unless otherwise ordered by the court, the parties should be required to copy one another with the form.

2. **Remote Access Policy.[25] The policy treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:** ***(1) Court-Created Records.*** Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.[26]

(2) Case Records other than Court-Created Records. Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.[27]

(3) Specific Types of Records Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:

(a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;

(b) Pretrial bail or presentence investigation reports;

(c) Statements of reasons or defendant stipulations, including any attachments thereto; and

(d) income tax returns

(4) Family Code Proceedings. Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-

[25] See Appendix D for a copy of the Council's Public Access to Case Records Draft Rule. Also note, as discussed in Judge Spencer's cover letter to this report, the Committee submitted two alternative approaches to the Council regarding remote access – the Council adopted the approach as detailed in Recommendation No. 2 and rejected the alternative that any court record otherwise open at the courthouse may be published on the internet.

[26] The Council acknowledges that some court orders are required by law to contain some of those personal identifiers deemed confidential by this Committee (e.g., divorce decrees must contain a social security number). However, the Council leaves the decision as to how to handle those situations to the Texas Supreme Court, local administrative judge, or individual judge.

[27] The parameters of the system need to be defined. The Committee generally favored the subscriber-agreement system implemented in Tarrant County, but would not mandate that a user fee be charged.

created case records, are extremely sensitive and should be excluded from remote access by the general public.[28]

3. **The Texas Judicial Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While some members recommend that access to paper documents and electronic documents be the same, they acknowledge that there may be records (e.g., medical, psychological and psychiatric reports, tax returns, and defendant stipulations) or proceedings (e.g., child custody disputes, adoption or divorce proceedings) that are not appropriate for internet publication and should therefore be made confidential both at the courthouse and on the internet.[29] The committee should examine and make recommendations to protect victims of sexual assault, domestic violence, stalking, or other such victims from being identified and located by use of the information contained in public court records.**

4. **The Texas Judicial Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.**

The Council is confident that with the implementation of the recommendations outlined above, the public's trust, confidence, and use of the court system will continue to thrive. Likewise, with the implementation of a confidential Sensitive Data Form, the public safety concerns associated with identify theft and other improper motives can be minimized while the integrity of the judicial system is preserved.

[28] This provision recognizes the personal nature of those disputes involving children, marriages, and parental rights and restricts remote access to such proceedings by the general public.

[29] The Committee noted the publicity recently encountered by Republican candidate Jack Ryan of Illinois who dropped out of the U.S. Senate race after unsealed divorce and child custody records revealed unfavorable allegations.

Appendix A

Minutes of Meetings

December 11, 2003
February 25, 2004
April, 27, 2004
May 13, 2004
June 16, 2004
July 13, 2004

TEXAS JUDICIAL COUNCIL

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COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

December 11, 2003
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:30 a.m. on December 11, 2003 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Charles Bacarisse	District Clerk, Harris County
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Orlinda Naranjo.

With a quorum established, the Committee on Public Access to Court Records took the following action.

Judge Spencer welcomed the Committee members and provided an overview of the Committee's charge.

Ms. Kilgo then summarized the issue for the Committee, describing concerns associated with the recent use of the internet to distribute court documents and records.

Judge Spencer addressed the issues faced by the probate courts in Bexar County where court records often include bank account numbers, social security numbers, detailed property records, guardianship record information, and medical data.

Mr. Bacarisse described the types of court records available on the internet for Harris County and the resources required to make those records available online. The Harris County District Clerk's office images all new court documents and continues to image backfiles for internet availability. Ms. Wilson described the availability of court records in Fort Bend County where all of the fifteen million documents dating back to the 1830s are published online and on CD ROM.

Committee members questioned, "Why court records should be available on the internet?" Potential reasons discussed included, judicial accountability, empirical research, cost and space savings in the clerk's office, and public expectation and demand.

Committee members then addressed the potential harms resulting from unlimited online access to court records including identity theft; the dissemination of sensitive personal and medical information; decreases in jury participation; the use of court information by data collection and sales companies; the use of court information by industry for questionable purposes, such as insurance sales or employment decisions; and the threat of "court publication" as a litigation tactic, which could cause a potential litigant to avoid the court system as a means of recourse.

The Committee generally discussed information that might be withheld from online court records and how it could be withheld. Should there be different levels of access to online court records? Should the documents available at the courthouse differ from those available online? What information should be withheld both online and at the courthouse? How does a user fee for online access limit the problems associated with online access to court records? Should litigants bear any of the responsibility for assuring that sensitive information does not become available online? What potential burdens exist for court clerks if required to redact portions of documents rather than entire documents?

After lengthy discussion, the Committee decided to meet again in February of 2004. The members requested that a representative of law enforcement be available at the next meeting.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 12:15 p.m.

Judge Polly Jackson Spencer
Chair

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HAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

ICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

February 25, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:35 a.m. on February 25, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Lance Byrd	President & CEO, Sendero Energy, Inc.
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
Robert Duncan	Senator, Lubbock
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Dianne Wilson	County Clerk, Fort Bend County
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were, Mr. Charles Bacarisse, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Sharolyn P. Wood.

Judge John J. Specia (225th District Court, Bexar County), Judge Lamar McCorkle (133rd District Court, Harris County), and Tom Wilder (District Clerk, Tarrant County) participated via conference phone. Paul Billingsly (Director, Technical Services Bureau, Harris County District Clerk's Office) and James Brubaker, (Commander of Narcotics, Department of Public Safety) testified as resource witnesses.

With a quorum established, the Committee on Public Access to Court Records took the following actions.

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the December 11, 2003 Committee meeting. After a motion and a vote, the Committee adopted the minutes.

Judge Specia described the PACER system used by federal bankruptcy courts, and expressed his concern over the possibility of family case information on the internet.

Judge McCorkle discussed some concerns regarding case records on the internet, for example, property inventories in divorce cases, which may potentially send litigants to private dispute resolution. Judge McCorkle expressed support for a standard form that might be used to automatically seal certain confidential information.

Tom Wilder described the development and functionality of the dial-in information system used in Tarrant County. The system is a fee for service arrangement allowing access to scanned case files. Judges have the power to make any document "unavailable" for the online service, although this designation is rarely used by the judges. Out of state subscribers do include information vendors.

Paul Billingsly then presented and described Harris County's "E-Clerk" system, which is a fee-based court information system that makes imaged court documents available via the internet. The system uses a cover sheet, does not include family law orders, and does not allow text searches.

Bulk Dissemination
The Committee discussed the value of the information for legitimate academic aggregate research. Senator Duncan suggested that privacy concerns of the litigants should outweigh any research benefits. Professor Young suggested that there should be an exception for academic research. Judge Spencer called for a policy regarding bulk dissemination of court case information. Ms. Wilson noted a lawsuit against her office, which required her office to provide an enormous number of cases.

The members questioned the extent to which information vendors already have scanned documents from the courthouse. Doctor Young suggested shifting liability for misused information to the vendor to curtail the availability of scanned court documents.

The members discussed the possibility of a lag time from filing to availability on the internet for certain case types to subvert any negative effects of widespread dissemination. The committee discussed a bill concealing protective orders for 48 hours, which was passed during the 78th legislative session.

A Prospective or Retrospective Rule
Judge Spencer stated that any rule adopted by the Committee should apply only to documents filed after the enactment of the rule because of the exorbitant redaction costs associated with a retrospective rule. Mr. Gavin stated that the Committee should consider a transition strategy when implementing the new rule.

NEXT MEETING
After the lengthy discussion, the Committee decided to meet again in April or May of 2004.

ADJOURNMENT
There being no further business before the Committee, the meeting was adjourned at approximately 1:20 p.m.

Judge Polly Jackson Spencer
Chair

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Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

April 27, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:40 a.m. on April 27, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Charles Baccarise	District Clerk, Harris County
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Tony Reese	Professor, University of Texas School of Law
Sharolyn P. Wood	Judge, 127th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Mr. David Gavin, Representative Will Hartnett, Chief Justice Sherry Radack, and Ms. Dianne Wilson.

Judge Juanita Vasquez-Gardner (399th District Court, Bexar County) attended as an invited resource witness. Marc Hamlin (District Clerk, Brazos County and former president of the District and County Clerks Association) and Michael Grenet (citizen of Bryan, Texas) registered as witnesses and testified before the Committee.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the February 25, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Vasquez-Gardner testified before the Committee as follows: she expressed her concerns regarding the availability of personal identifiers on the internet and at the courthouse; noted that while redaction might provide some protection, in many instances it will not provide enough protection; and questioned how the Committee might protect sexual assault victims or individuals who undergo drug treatment.

Mr. Grenet testified before the Committee as follows: he expressed his personal concerns as a former victim of identity theft and recent divorcee, stating that he feels vulnerable because of the amount of personal information that is available to the public with the internet publication of divorce cases by his district clerk.

Professor Reese explained the draft rule submitted to the Committee by him and Professor Young. Professor Reese pointed out that the draft rule allows the Committee to identify individual items to be placed on a confidential data form; to identify a list of documents that would be unavailable on the internet; and to identify classes of cases that would be unavailable on the internet. Professor Reese reminded the Committee that the draft rule is currently written to address access by the public and thus would not prohibit differential access to the parties.

Mr. Baccarise reminded the Committee that the clerks should not be required to make judgment calls regarding the availability of information on the internet. The Committee discussed placing the burden of excluding confidential data from court filings on the parties and their attorneys.

Mr. Hamlin testified before the Committee as follows: he stated the Committees should establish a prospective rule because a retrospective rule would place a tremendous burden on clerks' offices; he noted that the clerk cannot legally certify a document that has been redacted; and he expressed his opinion that because this information is readily available from other sources, the courts should have little concern that increased internet access to court records is significantly adding to the availability of sensitive information.

Judge Wood noted that the reason for keeping court records is to facilitate court business. She expressed her concern that making court documents available on the internet may shut down the availability of those documents at the courthouse. She suggested that the Committee limit

internet access to the official court minutes and general docket information, including the calendar, index and register of actions. She also suggested that the Committee consider limiting internet access to the pleadings and other such documents to the parties and their attorneys.

Judge Wood made a motion that only the court minutes (documents signed by the judge), docket, calendar, and case index (or register of actions) be available by remote electronic means such as through the internet. (The pleadings and case files would not be publicly available online.) That motion failed with 3 yes, 5 no, and 4 present not voting.

Mr. Baccarise made a motion to adopt the draft rule as presented as a working document to be used as a foundation to outline more specific policies as the Committee's work progresses. That motion was adopted by a non-record vote.

NEXT MEETING
The Committee will meet again in early May or early June.

ADJOURNMENT
There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.

Judge Polly Jackson Spencer
Chair

TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 936-2423
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

May 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:50 a.m. on May 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Ms. Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Charles Baccarise, Mr. Lance Byrd, Ms. Wanda Garner Cash, Senator Robert Duncan, and Representative Will Hartnett.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the April 27, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Upon proper motion and discussion, the Committee adopted a motion to generally support the implementation of a "Sensitive/Confidential Data Form" which would govern both paper and electronic filings such that the form would not be accessible to the public either remotely or at the courthouse. The confidential data form would include: social security numbers; bank account numbers, credit card numbers, other financial account numbers, and PIN numbers; driver's license numbers; date of birth; government-issued identification numbers (except for state bar numbers); a victim's address and phone number (with the understanding that the definition of "victim" needs to be clarified); and the name of a minor child.

Upon proper motion and discussion, the Committee adopted a related motion that "without court permission" be added to the language of the first motion and that the rule incorporate the requirement that parties copy one another with the form.

Ms. Wilson suggested that the Committee define the word "remote" to refer to the internet as we know it today. The term should not refer to court personnel at remote locations. Professor Reese reminded the Committee that the proposed rules apply only to the public.

Judge Naranjo expressed her concern about the distinction between information available at the courthouse and information available online with the development of a two-tier system of access, and stated that any protections should be implemented at the courthouse.

Ms. Wilson stated that in four years of having all case documents online she has never received complaints from the public regarding internet accessible information other than those regarding personal identifiers and financial account information.

Upon proper motion and discussion, the Committee adopted a motion that certain specific types of *records*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion that the case records relating to certain *proceedings*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion to recommend to the Legislature that certain specific types of *records*, to be determined by this Committee, Not be made available to the public either remotely or at the courthouse on a prospective basis.

The membership briefly discussed bulk distributions of information, but tabled the discussion until future meetings.

NEXT MEETING
The Committee will meet again in June.

ADJOURNMENT
There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.

Judge Polly Jackson Spencer
Chair

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COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

June 16, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on June 16, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Mr. Charles Baccarise	District Clerk, Harris County
Ms. Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Sharolyn P. Wood	Judge, 127th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett and Ms. Dianne Wilson. Also attending were Mr. Thomas Wilder, Tarrant Councy District Clerk and Ms. Monica Latin, Sedona Conference.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the May 13, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer reviewed the Committee's progress from the previous four meetings and asked the committee to consider several proposed motions after discussion.

Judge Wood discussed a draft rule she developed with Chief Justice Radack. Specific provisions included public access to court created documents and calendars; greater access for the litigant if possible; access to be made available only through case number searches rather than through "Google" searches; and a prohibition on bulk access.

Committee members discussed the possibility of requiring local courts to develop a plan to be approved by the Supreme Court before making court records available remotely. Mr. Baccarise stated that the counties are already required to submit such plans to the state library. Chief Justice Phillips did not think that the Supreme Court would want to review remote access plans for every county.

Judge Wood suggested that the Committee send alternative proposals to the Supreme Court Rules Committee for consideration. Such an approach would allow this Committee to provide valuable input to the Rules Committee while keeping the issue open for discussion. Judge Spencer outlined three public remote access options already discussed by the committee: (1) remote access only to docket-type information; (2) partial remote access with an exclusion list: and (3) unlimited remote access to otherwise open records. All options would include the confidential data form with the burden of compliance would be on the filing party.

The committee then discussed the burden of compliance on the filing party. The committee also discussed the use of a filing cover sheet to be completed by the filing party for determining the nature of a court document and its contents; the role of the court regarding enforcement and the role of the clerks when an error is made.

Committee members discussed the "practical obscurity" attained when a subscriber system is in place. Mr. Wilder (Tarrant County District Clerk) and Mr. Baccarise discussed the differences between a subscriber system as used in Tarrant county, which requires all users to register with the clerk's office, and a non-subscriber system like that used in Harris county, which only tracks users for billing purposes.

Judge Gilbert and Justice Goodwin agreed to develop a list of potentially sensitive criminal case information.

Judge Spencer then asked the Committee members to be ready to vote on substantive motions at the next meeting.

NEXT MEETING
The Committee will meet again on June 29.

ADJOURNMENT
There being no further business before the Committee, the meeting was adjourned at approximately 2:20 p.m.

Judge Polly Jackson Spencer
Chair

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COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

July 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on July 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Mr. Lance Byrd	President & CEO, Sendero Energy, Inc.
Ms. Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1st Court of Appeals
Ms. Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Charles Baccarise, Senator Robert Duncan, Representative Will Hartnett and Mr. Tony Reese. Judge Allen Gilbert attended via conference call. Also attending was Mr. Thomas Wilder, Tarrant County District Clerk.

With a quorum established, the Committee on Public Access to Court Records took the following actions.

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the June 16, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer informed the members that this would be the last meeting of the Committee before the August Texas Judicial Council meeting and that the Committee should adopt its final recommendations for presentation at the August Council meeting. Judge Spencer thanked the members for their time and their dedication.

Judge Spencer suggested that the Committee adopt alternative proposals for presentation to the Council given the divergent viewpoints of Committee members.

Ms. Diane Wilson reminded the Committee that any requirement on the court clerk to redact information from a part of a court document would create significant burdens on the clerk's office. To address her concerns, upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.5(f) such that the provision would read "If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed."

Mr. David Gavin asked whether access to the sensitive data form would be available to criminal justice agencies for criminal justice purposes under the proposed rule. Upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.3 to state that the rule does not limit access to case records by criminal justice agencies for criminal justice purposes.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Supreme Court require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Texas Judicial Council appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The committee should report to the Council prior to the 80th Regular Legislative Session.

Upon proper motion and discussion, the Committee adopted a motion to submit the following two alternative recommendations to the full Council.

Alternative I: Open Remote Access. This approach treats remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. This approach treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:

(1) Court-Created Records. Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.

(2) Case Records other than Court-Created Records. Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.

(3) Specific Types of Records. Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:

(a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records
(b) Pretrial bail or presentence investigation reports;
(c) Statements of reasons or defendant stipulations, including any attachments thereto; and
(d) Income tax returns.

(4) Family Code Proceedings. Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, are extremely sensitive and should be excluded from *remote access* by the general public.

Upon proper motion and discussion, the Committee adopted a motion to recommend to the Council that a new committee be formed to determine whether additional case records or proceedings should be closed at the courthouse. While some members felt that public access to paper documents and electronic documents should be treated the same, they acknowledged that there may be some records or proceedings that are not appropriate for internet publication.

NEXT MEETING

The Committee will present its recommendations to the full Texas Judicial Council in August.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 3:00 p.m.

Polly Jackson Spencer

Judge Polly Jackson Spencer
Chair

Appendix B

Confidential Court Case Records in Texas

Current Statutory Protections/Requirements in Texas

a. Permanent Protection from Public Access

Abortion §33.003 Family Code

Accident Reports §62.0132 Gov't Code – except to a person who can provide two or more of the: date, the street, or the name of any person involved in the accident

Adoption §162.021. & §162.022 - The records concerning a child maintained by the district clerk *after* entry of an order of adoption are confidential.

Arrest Warrant & Affidavit Article 15.26 Code of Criminal Procedure – public information, beginning immediately when the warrant is executed.

Biometric Identifier §559.001 Gov't Code - defined as a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A court or clerk may not disclose such identifier unless: the individual consents, disclosure is permitted or required by statute, or is by or for law enforcement.

Crime Victim Impact Statement §552.1325 Gov't Code - the name, social security number, address, and telephone number of a crime victim; and any other information that would identify the crime victim.

Criminal History Records of Professional Guardians §411.1386 Gov't Code & §698 Probate Code.

E-Mail Addresses §552.137 Gov't Code – for members of the public provided for the purpose of communicating electronically with a governmental body

Emergency Application for Funeral/Burial Expenses & Access to Personal Property Chapter 5, §§ 111 & 112 Probate Code - includes the name address social security and interest of the applicant

Information in Application for Marriage License. §552.141 Gov't Code - social security number on a license, application, affidavit

Juries – Grand Article 19.42 Code of Criminal Procedure – personal information including the person's home address, home phone number, social security number, driver's license number; Article 19.34, Code of Criminal Procedure – proceedings in general

Juries - Petit §62.0132 Gov't Code - written questionnaire; Art. 35.29 Code of Criminal Procedure- home address and phone number, social security number, driver's license number

Juvenile Justice Hearings and Records §§54.08 & 58.007 Family Code

Mental Health Proceedings §144.005 Civ. Prac & Rem. Code & §571.015 Health & Safety Code – including civil commitment proceedings Chapter 574 Health & Safety Code

Military Discharge Records §552.140 Gov't Code - on or after September 1, 2003

Motor Vehicle Records §§730.005 & 730.006 Transp. Code – generally protects personal information

Order of Witholding §8.152 Family Code On request, the court may exclude the obligee's *address and social security number* if the oblige or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject.

Pretrial Request for Advance Payment of Expenses in Death Penalty Case Art. 26.052 & 11.071 Code of Criminal Procedure - to investigate potential defenses

Protective Orders §85.007 Family Code - On request, the court may exclude the *address and telephone number* of a person protected; the *place of employment* or business of a person protected; the *child-care facility or school of a child protected* by the order attends or in which the child resides.

Wills Deposited for Safekeeping Probate Code, Chapter 4, § 71(d)

Victims of Sex Offenses Article 57.02 Code of Criminal Procedure - a victim may elect to use a pseudonym for all public purposes

b. Temporary Protection from Public Access

Birth Records §552.115 Gov't Code – until the 75th anniversary of the date of birth
Death Records §552.115 Gov't Code until the 25th anniversary of the death
Dissolution of Marriage Pleadings §6.410 & §102.0086 Family Code – (Harris County) until after the date of service of citation or the 31st day after the date the suit was filed.
Protective Orders/Temporary Ex Parte Orders Applications §82.010 Family Code – (Harris County) until after the date of service of notice of the application or the hearing date/until after the date the respondent is informed of the court's order

c. Documents on which a social security number, driver's license number name, address, phone, name of employer, or birth date is required

Final Orders in SAPCR Suits §105.006 Family Code- other than termination or adoption orders
Child Support Lien Notice §157.313
Child Support Petition for Modification §159.311
Suspension of License Petition §232.005
Name Change §45.102 Family Code - or must provide a reason for exclusion

d. Documents on which a social security number may be excluded

Deeds, Mortgages and Deeds of Trust §11.008 Property Code - executed on or after January 1, 2004 are *not* required to contain a social security number or a driver license number. The Code permits the filer to delete the information prior to filing.

Appendix C

Washington's Confidential Information Form
and
Financial Source Document Cover Sheet

CONFIDENTIAL INFORMATION FORM (INFO)

County:	Cause Number:	**Do not file in a public access file.**

COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT

☐ Divorce/Separation/Invalidity/Nonparental Custody/Paternity/Modifications ☐ Other
☐ Domestic Violence ☐ Antiharassment ☐ Information Change (Check if you are updating information)

☐ **A restraining order or protection order is in effect protecting ☐ the petitioner ☐ the respondent ☐ the children.**

☐ **The health, safety, or liberty of a party or child would be jeopardized by disclosure of address information because:** _____

The following information about the parties is required in all cases:
(Use the Addendum To Confidential Information Form to list additional parties or children)

Petitioner Information			Type or Print only	**Respondent Information**		
Name (Last, First, Middle)				Name (Last, First, Middle)		
Race	Sex	Birthdate		Race	Sex	Birthdate
Driver's Lic. or Identicard (# and State)				Driver's Lic. or Identicard (# and State), (or, if unavailable, residential address)		
Mailing Address (P.O. Box/Street, City, State, Zip)				Mailing Address (P.O. Box/Street, City, State, Zip)		
Relationship to Child(ren)				Relationship to Child(ren)		

The following information is required if there are children involved in the proceeding.
(Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment.)

1) Child's Name (Last, First, Middle)
Child's Race/Sex/Birthdate
Child's Soc. Sec. No. (If required)
Child's Present Address or Whereabouts
2) Child's Name (Last, First, Middle)
Child's Race/Sex/Birthdate
Child's Soc. Sec. No. (If required)
Child's Present Address or Whereabouts
List the names and present addresses of the persons with whom the child(ren) lived during the last five years:

List the names and present addresses of any person besides you and the respondent who has physical custody of, or claims rights of custody or visitation with, the child(ren):

Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:	
Petitioner's Information	**Respondent's Information**
Soc. Sec. No.:	Soc. Sec. No.:
Residential Address (Street, City, State, Zip)	Residential Address (Street, City, State, Zip)
Telephone No.: ( )	Telephone No.: ( )
Employer:	Employer:
Empl. Address:	Empl. Address:
Empl. Phone No.: ( )	Empl. Phone No.: ( )
For Nonparental Custody Petitions only, list other Adults in Petitioner(s) household (Name/DOB):	

Additional information:_____

_____

_____

☐ Addendum To Confidential Information Form is attached.

I certify under penalty of perjury under the laws of the state of Washington that the above information is true and accurate concerning myself and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because _____

_____.

Signed on _____ (Date) at _____ (City and State).

_____

Petitioner/Respondent

ADDENDUM TO CONFIDENTIAL INFORMATION FORM (AD)

County:	Cause Number:	**Do not file in a public access file.**
COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT		

The following information about additional parties is required in all cases.

Type or Print only

Additional Petitioner Information			**Additional Respondent Information**		
Name (Last, First, Middle)			Name (Last, first, Middle)		
Race	Sex	Birthdate	Race	Sex	Birthdate
Drivers Lic. or Identicard (# and State)			Drivers Lic. or Identicard (# and State), (or, if unavailable, residential address)		
Mailing Address (P.O. Box/Street, City, State, Zip)			Mailing Address (P.O. Box/Street, City, State, Zip)		
Relationship to Child(ren)			Relationship to Child(ren)		

The following information is required if there are additional children involved in the proceeding
(Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment).

3) Child's Name (Last, First, Middle)
Child's Race/Sex/Birthdate
Child's Soc. Sec. No. (If required)
Child's Present Address or Whereabouts
4) Child's Name (Last, First, Middle)
Child's Race/Sex/Birthdate
Child's Soc. Sec. No. (If required)
Child's Present Address or Whereabouts

Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:

Additional Petitioner Information	**Additional Respondent Information**
Soc. Sec. No.:	Soc. Sec. No.:
Residential Address (Street, City, State, Zip)	Residential Address (Street, City, State, Zip)
Telephone No.:	Telephone No.:
Employer:	Employer:
Empl. Address:	Empl. Address:
Empl. Phone No.:	Empl. Phone No.:

SUPERIOR COURT OF WASHINGTON
COUNTY OF

In re: and	Petitioner(s), Respondent(s).	**NO.** SEALED FINANCIAL SOURCE DOCUMENTS (SEALFN) **CLERK'S ACTION REQUIRED**

SEALED FINANCIAL SOURCE DOCUMENTS

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

- ☐ Income Tax records.
  Period Covered:
- ☐ Bank statements.
  Period Covered:
- ☐ Pay Stubs.
  Period Covered:
- ☐ Credit Card Statements.
  Period Covered:
- ☐ Other:

Submitted by:

_____

NOTICE: The other party will have access to these financial source documents. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.

Appendix D

Public Access to Case Records Draft Rule

Public Access to Case Records Draft Rule

RULES OF JUDICIAL ADMINISTRATION

RULE 14. PUBLIC ACCESS TO CASE RECORDS

14.1 Policy. The purpose of this Rule is to facilitate public access to case information while protecting personal safety and privacy interests. In addition to the paper-based record receipt and retention process, courts are now equipped to create, use and maintain case records in electronic form. This Rule informs and instructs the courts, practitioners, and the public regarding access to case records regardless of the physical form of the record.

14.2 Definitions. In this Rule:

(a) *Access* means the ability to view or obtain a copy of a case record.

(b) *Bulk distribution* means the distribution of all, or a significant subset, of the information in multiple case records, as is, and without modification or compilation.

(c) *Case record* means a record of any nature created or maintained by, or filed by any person with, a court in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

(d) *Compiled information* means information that is derived from the selection, aggregation, or reformulation by the court of some of the information from more than one individual case record.

(e) *Court* means any court created by the Constitution or laws of the State of Texas including the Texas Supreme Court, the Court of Criminal Appeals, the intermediate courts of appeals, the district courts, the constitutional and statutory county courts at law, the statutory probate courts, justice of the peace and small claims courts, and municipal courts.

(f) *Court-Created Record* means a record of any nature created by a court or court clerk in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the

record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

(g) A case record is in *electronic form* if that case record is in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

(h) *Remote access* means the ability to electronically search, inspect, or copy information in a court record by a member of the general public without the need to physically visit a court facility.

14.3 Authority and Applicability.

(a) This Rule is adopted under the authority granted to the Supreme Court of Texas in the Texas Constitution, Article V, Section 31(a) and (c), as well as Texas Government Code Section 552.0035(a).

(b) This Rule governs access by the general public to all case records. This Rule does not limit access to case records in any given action or proceeding by a party to that action or proceeding or by the attorney of such a party. This Rule does not limit access to case records by criminal justice agencies for criminal justice purposes, or other persons or entities that are entitled to access by law or court order.

(c) This rule does not apply to court records that are filed with the county clerk and are unrelated to the court's adjudicative functions including land title records, vital statistics, birth records, naturalization records, voter records and other such recorded instruments.

(d) This Rule does not require any court or clerk of court to redact, or restrict information that was otherwise public in, any case record created before the effective date of this Rule.

14.4 Public Access to Case Records.

(a) ***Generally.*** Case records other than those covered by Rule 14.5 are open to the general public for viewing and copying during the regular business hours established by the court. But this Rule does not itself require a court or court clerk to:

(1) create a case record, other than to print information stored in a computer;

(2) retain a case record for a specific period of time beyond that time otherwise required by law; or

(3) respond to or comply with a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in

Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) ***Remote Access to Case Records.*** A court or court clerk may, but is not required to, provide to the general public remote access to case records in accordance with the provisions of this Rule. A court or court clerk that chooses to provide such remote access must employ appropriate security measures, procedures, devices and software to protect the security and integrity of those records and to prevent unauthorized access to them. The specific case records to which remote access is granted, as well as the specific information that is included, its format, method of dissemination, and any subsequent changes thereto, must comply with the provisions of this Rule.

(c) ***Case-by-Case Basis for Access to Case Records in Electronic Form.*** A court or court clerk may only grant public access to a case record in electronic form when the party requesting access to the case record identifies the case record by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis. The case-by-case limitation does not apply to the index, calendar, docket, or register of actions.

(d) ***Changes in Public Access to Case Records.*** If by court order or operation of law a court or court clerk is required to deny public access to a case record to which the court has previously provided public access, the court or court clerk is not required to take any action with respect to any copy of the case record that was made by any member of the public before public access to the case record became unavailable.

(e) ***Conditions of use.*** A court, or a court clerk with the consent of the judges served by the court clerk, may adopt local rules to provide for the orderly public access to case records consistent with the provisions of this Rule. The local rules may provide for conditions of use for public access to case records, including, without limitation, (1) the user's consent to access the case records only as authorized by the court; (2) the user's consent to not attempt any unauthorized access; and (3) the user's consent to monitoring by the court of all access to its case records. The court adopting such local rules shall provide users with notice of such conditions of use, and obtain users' agreement to comply with them, in any reasonable manner that the court deems appropriate. The court or court clerk establishing such rules may deny access to case records to a member of the public for past failure to comply with any conditions of use provided for in such local rules. The *conditions of use* provisions may not apply to public access to the court-created case records of the court. 11/12/04, at 1205

(f) ***Inquiry to requestor.*** Except for requests for bulk distribution or access to compiled information as provided in Rule 14.4(h)(1), a person requesting access to a case record may not be asked to disclose the purpose of the request as a condition of obtaining access to the case record. But a court or court clerk may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(g) ***Uniform treatment of requests.*** A court or court clerk must treat all requests for public access to case records uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

(h) ***Bulk Distribution.*** Except as permitted in Rule 14.4(h)(1), a court or court clerk may provide bulk distribution in electronic form to the general public only of any index, calendar, docket, or register of actions, and not of any other case record.

(1) **Limited exception.** A request to a court or a court clerk for bulk distribution or access to compiled information, other than any index, calendar, docket, or register of actions, may be granted to individuals or entities having a bona fide scholarly, journalistic, political, governmental, or other legitimate research purpose, and where the identification of specific individuals is ancillary to the purpose of the inquiry. A requestor under this subsection must:

(A) fully identify the requestor and describe the requestor's research and purpose of the inquiry;

(B) identify what information is sought;

(C) explain provisions for the secure protection of the information requested;

(D) agree to maintain as confidential the identification of specific individuals in the case records; and

(E) acknowledge that the court is the owner of the case records and has the exclusive right to control their use.

(i) Historic Cases. Notwithstanding the provisions of Rule 14.5(d) and (e), a court or court clerk may allow remote access by the general public to any case record, or to all case records in any proceeding, that is determined to have historic significance, either (a) on order of the administrative judge for the county in which the court is located or (b) fifty years after the date on which the case record was file or on which the proceeding was commenced.

14.5 Exemptions from Public Access. Public access (or, where specified, remote access by the general public) is not allowed under this Rule to the following case records, as specified:

(a) ***Federal Law.*** Any case record containing information that is excluded from public access pursuant to federal law.

(b) ***Texas Law.*** Any case record containing information that is excluded from public access pursuant to Texas statute or court rule.

(c) ***Court Order.*** Any case record containing information excluded from public access by specific court order.

(d) ***Limitation on Remote Access.*** Remote access to the following records or proceedings is limited as follows:

> ***(1) Case Records other than Court-Created Records.*** Remote access by the general public to case records, other than court-created case records, may be granted only through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.
>
> ***(2) Specific Types of Records*** Notwithstanding Rule 14.5(d)(1), the following case records are excluded from remote access by the general public:
>
> > **(a)** Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;
> >
> > **(b)** Pretrial bail or presentence investigation reports;
> >
> > **(c)** Statements of reasons or defendant stipulations, including any attachments thereto; and
> >
> > **(d)** income tax returns
>
> ***(3) Family Code Proceedings.*** Notwithstanding Rule 14.5(d)(1), the case records filed as part of any family code proceeding, other than court-created case records, are excluded from remote access by the general public.
>
> ***(4) Procedures.*** Unless otherwise ordered by the court, any party filing with a court any case record that is or that includes a document identified in Rule 14.5(d)(2) or (3) shall at the time of filing notify the court that the filing includes a case record to which access is restricted under this section. Such notification shall occur as provided by local court rule; in the absence of such a rule, the party shall include with the filing a cover sheet identifying the relevant case record. The court or court clerk shall have no obligation to review each case record submitted to it to determine whether it is or includes a document identified in Rule 14.5(d).

(e) ***Sensitive Data Form.*** A Sensitive Data Form, as provided for in Rule 14.6.

(f) ***Public Access to Part of Case Record.*** If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed.

14.6 Sensitive Data.

(a) The court or court clerk shall maintain, as a case record to which public access is not allowed, a Sensitive Data Form submitted to the court and containing any items of sensitive data. "*Sensitive data*" consists of the following information:

(1) social security numbers;

(2) bank account, credit card, or other financial account number and associated PIN numbers;

(3) driver's license numbers, passport numbers, or similar government-issued identification card numbers, excluding attorney state bar numbers;

(5) date of birth;

(6) the address and phone number of a person who is a crime victim, as defined by Article 56.32, Code of Criminal Procedure, in the proceeding in which the case record is filed or in a related proceeding; and

(7) the name of a minor child.

(b)(1) Unless otherwise ordered by the court, any party filing a pleading or any other case record (other than a Sensitive Data Form) with the court shall not include any sensitive data in such pleading or case record, whether filed on paper on in electronic form, regardless of the person to whom the sensitive data relates.

(2) Unless otherwise ordered by a court, if reference to any of the following items of sensitive data is necessary in a pleading or any other case record (other than a Sensitive Data Form) filed with the court, the party filing such pleading or case record shall refer to that sensitive data as follows:

(A) **Social Security Numbers**. If the Social Security Number of an individual must be included in a case record, only the last four digits should be used.

(B) **Names of Minor Children**. If the involvement of a minor child must be mentioned in a case record, only that child's initials should be used, unless otherwise necessary.

(C) **Financial Account Numbers**. If financial account numbers must be included in a case record, only the last four digits should be used.

(D) **Date of Birth**. If a date of birth must be included in a case record, only the month and year should be used.

(c) The responsibility for omitting or redacting from case records filed with the court the sensitive data identified in this Rule rests solely with counsel and the party filing the case record. The court or court clerk shall have no obligation to review each pleading or other submitted case record for compliance with this Rule.

14.7 Disallowing Public Access. In addition to any other remedy provided by law, any interested person seeking to disallow public access to any case record containing sensitive data or excluded from public access under Rule 14.5, may apply for relief to the court or court clerk of the court in which the case record was originally filed. The court may, upon application by any interested person or on its own motion, disallow public access or remote access to, or order a party to redact, any case record that contains sensitive data in violation of this Rule or that is or includes a document identified in Rule 14.5(d).

14.8 Sanctions. A court shall have the authority to impose appropriate sanctions on any party failing to comply with the provisions of Rule 14.5 or Rule 14.6 in a filing with that court.

14.9 Immunity. A court, court clerk, or court employee who unintentionally and unknowingly discloses a case record that is exempt from public access or that includes erroneous information is immune from liability for such disclosure. A court, court clerk, or court employee is not liable for inaccurate or untimely information, or for misinterpretation or misuse of the data, included in any case record.

14.10 Costs for Copies of Case Records. The cost for a copy of a case record is either:

(1) the cost prescribed by statute, or

(2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the Building and Procurement Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.

14.11 Contracts with vendors providing information technology services. If a court or court clerk contracts with a vendor to provide information technology support to gather, store, or provide public access to case records, the contract must require the vendor to comply with the provisions of this Rule. Each contract shall prohibit vendors from making bulk distribution of case records or from disseminating compiled information, except as provided by this Rule. Each contract shall require the vendor to acknowledge that case records remain the property of the court and are subject to the directions and orders of the court with respect to the handling of and public access to the case records, as well as the provisions of this Rule. These requirements are in addition to those otherwise imposed by law. For purposes of this Rule, the term *"vendor"* includes a state, county or local governmental agency that provides information technology services to a court.

14.12 Requests for Deviations. A court or court clerk, with the consent of a majority of the judges served by the court clerk, may submit to the Supreme Court of Texas a written request to deviate from this Rule in providing public access to case records. Such request must:

(1) describe in detail the deviation requested;

(2) describe the purpose for the deviation; and

(3) identify the benefits and detriments of the deviation.

Approved deviations from this Rule may be implemented only upon written order by the Supreme Court of Texas.

E-GOVERNMENT ACT RULE

The Direction to Prescribe A Civil Rule

Section 205 (a) of the E-Government Act of 2002, Pub.L. 107-347, 116 Stat. 2899, 2913, 44 U.S.C. 101 note, requires each district court to establish a website. Section 205(c)(1) provides that the court "shall make any document that is filed electronically publicly available online." The court "may convert any document that is filed in paper form to electronic form"; if converted to electronic form, the document must be made available online. Section 205(c)(2) provides an exception — a document "shall not be made available online" if it is "not otherwise available to the public, such as documents filed under seal."

Section 205(c)(3) directs adoption of implementing rules:

> (A)(i) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28 * * * to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically.
>
> (ii) Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.
>
> (iii) Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.
>
> (iv) Except as provided in clause (v), to the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such protected information may file an unredacted document under seal, which shall be retained by the court as part of the record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition to, a redacted copy in the public file.
>
> (v) Such rules may require the use of appropriate redacted identifiers in lieu of protected information described in Clause (iv) in any pleading, motion, or other paper filed with the court (except with respect to a paper that is an exhibit or other evidentiary matter, or with respect to a reference list described in this subclause), or in any written discovery response—
>
> > (I) by authorizing the filing under seal, and permitting the amendment as of right under seal, of a reference list that—
> >
> > > (aa) identifies each item of unredacted protected information that the attorney or, if there is no attorney, the party, certifies is relevant to the case; and
> > >
> > > (bb) specifies an appropriate redacted identifier that uniquely corresponds to each item of unredacted protected information listed; and
> >
> > (II) by providing that all references in the case to the redacted identifiers in such reference list shall be construed, without more, to refer to the corresponding unredacted item of protected information.

Standing Committee E-Government Subcommittee

The Standing Committee has appointed an E-Government Act Subcommittee, chaired by Judge Sidney A. Fitzwater, to coordinate study of E-Government Act rules by the several advisory committees. Professor Daniel J. Capra, Reporter of the Evidence Rules Committee, has been designated Lead Reporter for the Subcommittee. Professor Capra prepared a "template" rule and Committee Note for consideration by the advisory committees. The template rule was extensively revised after a Subcommittee meeting last June; minutes of the June meeting are attached.

Each advisory committee has been asked to study the revised template rule at its Autumn 2004 meeting and to suggest any desirable changes or variations. The Subcommittee, in consultation with the advisory committee reporters, will consider the advisory committee reactions in January. The effort is designed to generate a uniform rule that may be adopted in uniform — or nearly uniform — terms for each of the Appellate, Bankruptcy, Civil, and Criminal Rules. Some variations may prove suitable for the different circumstances faced by the different procedure systems.

Revised Privacy Template

Date: June 16, 2004.

Rule [ ] Privacy in Court Filings

(a) Limits on Disclosing Identifiers. If an electronic or paper filing made with the court includes any of the following identifiers,[1] only these elements may be disclosed, unless the court orders otherwise,[2]

(1) the last four digits of a person's social security number and tax identification number[3];

← that's all many vendors want to make a note

(2) the initials of a minor's name[4];

(3) the year of a person's date of birth; and

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[1] The subcommittee rejected an option that would apply the redaction requirement only to filings made by parties: "If a party includes any of the following identifiers in an electronic or paper filing with the court, the party is limited to disclosing:"]

[2] The subcommittee determined that flexibility should be added to the rule by allowing the court to excuse the redaction requirements in a particular case.

[3] The subcommittee determined that tax identification numbers raise the same privacy concerns as social security numbers; for many individuals, those numbers are the same.

[4] The subcommittee rejected an exception to the redaction requirement for actions in which the minor is a party; it also resolved to inquire of CACM as to how it determined that a child's name should be a protected identifier.

(4) the last four digits of a financial account[5] number.[6]

(b) Unredacted Filing Under Seal. A party that makes a redacted filing under subdivision (a) may also file an unredacted copy under seal. The unredacted copy must be retained by the court as part of the record.[7]

(c) Reference List. A filing that contains redacted identifiers may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of redacted information listed. The reference list must be filed under seal and may be amended as of right. All references in the case to the identifiers included in the reference list will be construed to refer to the corresponding item of information.[8]

(d) Exemptions. The redaction requirement of subdivision (a) does not apply to the

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[5] The subcommittee rejected language that would limit the protection of financial accounts to those accounts that were personal; to active accounts; and to asset accounts. The subcommittee concluded that the risk of identity theft was significant with respect to *any* financial account number available over the internet.

[6] The subcommittee deleted home address as a protected identifier. It determined that a full home address was often necessary, especially in bankruptcy cases. The subcommittee requests the Criminal Rules Committee to consider whether home address should be a protected identifier in criminal cases. CACM supports the protection of home addresses in criminal cases. The subcommittee also requests the Criminal Rules Committee to consider whether it is necessary to protect home addresses in habeas cases.

[7] The subcommittee rejected the following language that was proposed by the Justice Department:

> Where a document is filed under seal solely to comply with this rule, the seal does not prohibit the disclosure of the document to the parties, their counsel, their agents, law enforcement officers, and triers of fact, nor the disclosure by those persons when appropriate to the performance of their official duties.

[8] This language is intended to track proposed legislation that would amend the E-Government Act to permit the filing of a registry list as an alternative to an unredacted document under seal. The subcommittee directed the Lead Reporter to monitor the legislation and to make any changes to the revised template to accord with the legislation as adopted.

following: [9]

(1) in a civil or criminal forfeiture proceeding, financial account numbers that identify the property alleged to be subject to forfeiture;

(2) records of an administrative agency proceeding;

(3) official records of a state court proceeding in an action removed to federal court; and [10]

(4) the records of a court or tribunal whose decision is being reviewed, if those records were not subject to subdivision (a) of this rule when originally filed.[11]

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[9] The subcommittee requests the Criminal Rules Committee to consider the following possible exemptions to the redaction requirement, as proposed by the Justice Department for criminal cases:

(1) filings in any court in relation to a criminal matter or investigation that are prepared before the filing of a criminal charge or that are not filed as part of any docketed criminal case;

(2) arrest warrants;

(3) charging documents—including indictments, informations, and criminal complaints—and affidavits filed in support of those documents;

(4) criminal case cover sheets.

The subcommittee also requests the Criminal Rules Committee to consider whether similar exemptions are necessary for civil cases.

[10] The subcommittee rejected an exception for "a certified copy of a document filed with the court." The subcommittee determined that a redaction could be indicated on a certified copy where necessary to protect an identifier.

[11] Some subcommittee members suggested that the exemption apply to "the records of a court or tribunal whose decision is being reviewed, if those records were not subject to subdivision (a) of this rule when originally ***created.***"

(e) Social Security Appeals; Access to Electronic Files. In an action for benefits under the Social Security Act,[12] access to an electronic file is authorized as follows, unless the court orders otherwise:

(1) the parties and their attorneys may have electronic access to any part of the case file, including the administrative record;

(2) all other persons may have remote[13] electronic access only to:

(A) the docket maintained under Rule [relevant civil or appellate rule]; and

(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.[14]

(f) Court Orders. In addition to the redaction requirement of subdivision (a), a court may by order limit or prohibit remote electronic access by non-parties to a document filed with the court. The court must be satisfied that a limitation on remote electronic access is necessary to protect against widespread disclosure of private or sensitive information that is not otherwise protected under subdivision (a).[15]

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[12] The subcommittee considered whether limited public access, as provided for Social Security cases, should be extended to other sets of cases, such as immigration, Black Lung, ADA cases, etc. The subcommittee deferred to the determination of CACM, made after extensive study, that Social Security cases are sui generis because of the sensitive information presented and the voluminous filings made. The Subcommittee concluded that in light of CACM's considered determination, the burden would be on those seeking exclusion of other sets of cases to show that public access must be limited in order to protect privacy interests. It is possible that such a showing will be made before or during the comment period.

[13] The revised template contemplates that members of the public may obtain electronic access at the courthouse.

[14] The subcommittee rejected a sentence at the end of the subdivision that would have provided: "The parties are not required to redact personal identifiers from a transcript filed in an action for benefits under the Social Security Act." The subcommittee found this language to be unnecessary.

[15] This subdivision is referred to the Advisory Committees to determine whether it is useful to clarify that the court may by order provide protection for information not covered by the redaction requirement, on the ground that it is sensitive information that should not be accessible to non-parties over the internet. CACM's position is that courts already have this power, and to

(g) Waiver of Protection of Identifiers. A party waives the protection of subdivision (a) as to the party's own identifier by filing that identifier without redaction.

Revised Template Committee Note

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in protecting personal identifiers, as it applies to paper as well as electronic filings. Paper filings in most districts are scanned by the clerk and made part of the electronic case file. As such they are as available to the public over the internet as are electronic filings, and therefore raise the same privacy and security concerns when filed with the court.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See http://www.privacy.uscourts.gov/Policy.htm The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

Subdivision (b) allows parties to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. [Subdivision (c) allows parties to file a register of redacted information. This provision is derived from section 205(c)(3)(iv) of the E-Government Act, as amended in 2004.]

In accordance with the E-Government Act, the rule refers to "redacted identifiers". The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

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include it in this rule would provide an open invitation to parties to seek court orders.

(g) Waiver of Protection of Identifiers. A party waives the protection of subdivision (a) as to the party's own identifier by filing that identifier without redaction.

Revised Template Committee Note

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The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See http://www.privacy.uscourts.gov/Policy.htm The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain "personal data identifiers" are not included in the public file.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

Subdivision (b) allows parties to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. [Subdivision (c) allows parties to file a register of redacted information. This provision is derived from section 205(c)(3)(iv) of the E-Government Act, as amended in 2004.]

In accordance with the E-Government Act, the rule refers to "redacted identifiers". The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

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include it in this rule would provide an open invitation to parties to seek court orders.

Subdivision (f) provides for limited public access in Social Security cases. Under Judicial Conference policy, Social Security cases are *sui generis* in the pervasiveness of sensitive information and the volume of filings. Remote electronic access by non-parties is limited to the docket and the written dispositions of the court. The rule contemplates, however, that non-parties can obtain full access to the Social Security case file at the courthouse.

Subdivision (g) allows a party to waive the protections of the rule as to its own personal identifier by filing it in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. If a party files an unredacted identifier by mistake, it may seek relief from the court.[16]

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[16] The subcommittee rejected language in the Committee Note that would have provided: "This rule does not apply to trial exhibits as they are not filed within the meaning of the rule." It was determined that exhibits are indeed filed in some courts, and that if exhibits are filed, they should be treated the same as any other court filing.

ALTERNATIVE SUBDIVISION (a)

(a) Limits on Information Disclosed~~ing Identifiers~~. ~~If~~ Unless the court orders otherwise, an electronic or paper filing ~~made with the court~~ that refers to a social security or tax identification number, a minor's name, a person's birth date, or a financial account may includes ~~any of the following identifiers~~ only ~~these elements may be disclosed, unless the court orders otherwise~~:

(1) the last four digits of ~~a person's~~ the social security, ~~number and~~ tax identification, or financial account number;

(2) the minor's initials ~~of a minor's name~~; and

(3) the year of ~~a person's date of~~ birth~~; and~~

~~**(4)** the last four digits of a financial account number~~.

Parallel Civil Rules Changes

Each Advisory Committee is to determine whether existing rules should be changed to reflect the new circumstances created by electronic access to materials filed with the court. Several Civil Rules may be candidates for future amendment; some of the more obvious possibilities are described briefly below. It may be premature, however, to consider amendments before gaining any experience with electronic access. Anticipated problems may not arise, and unanticipated difficulties are almost inevitable.

Rule 5(d). The statute requires that any document filed electronically be made available online. Paper documents converted to electronic form also must be made available online. Rule 5(d) now requires filing of "[a]ll papers after the complaint required to be served upon a party." Rule 5(d) was recently amended to forbid filing of discovery papers until they are used in the proceeding or the court orders filing. Rule 5(d) might be amended further to except other papers from filing.

Rule 5, whether in subdivision (d) or otherwise, also might be the place to add provisions on sealing filed papers. Rule 26(c)(6) already authorizes a protective order sealing a deposition. Section 205(c)(2) of the E-Government Act provides that a filed document shall not be made available online if it is "not otherwise available to the public, such as documents filed under seal."

Rule 5(d) also may be used to anticipate a pervasive problem. Filing discovery materials, when that happens, invokes all the limits of the proposed E-Government Act rule. Apparently depositions, responses to interrogatories, documents (including computer-generated information), requests for admission, and perhaps even reports of Rule 35 examinations, must be redacted. Rule 5(d) might be amended to provide a reminder of the duties imposed by Rule "5.2."

Amendments designed to limit filing requirements or to expand sealing practices must be approached with great care. It does not seem likely that these topics should be made part of the initial E-Government Act rules process, unless it seems appropriate to amend Rule 5(d) to refer to the Rule 5.2 duty to redact discovery materials when filed.

Rule 10. Rule 10(a) provides that "the title of the action shall include the names of all the parties." This provision is at odds with subdivision (a)(2) of the proposed rule, which permits only the initials of a "minor child." It might be desirable to add a cross-reference to Rule "5.2." (The E-Government Act might provide an occasion for reconsidering the question of pseudonymous pleading. There has not been any enthusiasm in recent years for considering an amendment that would attempt to guide this practice. But electronic access may suggest further consideration, particularly if it is easily possible to search court filings along with all other online materials that refer to a named person.)

Special problems arise from Rule 10(c), which indirectly reflects the practice of attaching exhibits to a complaint. The exhibit must be redacted to conform to Rule "5.2." It is difficult to guess whether this requirement will impose significant burdens in effecting the redaction, or whether there may be practical difficulties. If Rule "5.2(b)" survives, permitting filing of the complete complaint and exhibits under seal, these difficulties may be substantially reduced.

Again, it is difficult to frame amendments beyond a possible reference to Rule 5.2 in Rule 10(a).

Rule 11. The Minutes of the E-Government Subcommittee meeting reflect discussion of the question whether Rule 11 should be "amended to contemplate violations of the privacy/access rules. Judge [Jerry A. Davis] noted that CACM had reviewed this issue and determined that Rule 11 already covers any arguable violation of these policies and that it is better to leave it to the discretion of the courts as to how to deal with violations or abuse of any new rule regarding electronic filing. The Subcommittee agreed with this assessment."

Rule 11(b)(1) states that an attorney or party presenting a paper to the court certifies that it is not presented for any improper purpose. If it is desirable to use Rule 11 or any other rule of procedure to reach liability for such acts as purposefully filing a defamatory pleading, the present language seems adequate. The determination whether to bend Rule 11 to this purpose at all will be difficult — it at least approaches substantive questions of defamation liability, the right to petition courts, and privilege. It would not be wise to take on these issues by amending Rule 11, unless it be to disclaim any attempt to answer them.

Rule 12(f). The agenda includes a pending question addressed to the effect of a Rule 12(f) order to strike "from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Is the stricken material physically or electronically expunged? Or is it preserved to maintain a complete record, for purposes of appeal or otherwise, but sealed? Electronic access to court files may make this question more urgent, but there is no apparent change in the principles that will guide the answer.

Rule 12(f) could be amended to refer directly to an order to strike information that violates Rule "5.2." Authority to strike seems sufficiently supported, however, both by present Rule 12(f) and by the implications of Rule "5.2."

Rule 16. Rule 16(b) or (c) might be amended to include scheduling-order directions or pretrial-conference discussion of electronic-filing issues. The most apparent subjects would be limiting filing requirements or permitting filing under seal. Care would need to be taken to avoid interference with the purposes of the E-Government Act. But there may be an advantage, particularly in early years, from assuring that parties and court think of the privacy and security issues that may arise from electronic access.

Rule 26 or Other Discovery. Rule 5(d) limits on filing discovery materials are noted above. It is conceivable that a reminder of E-Government Act access — and the need to redact filed documents to comply with Rule "5.2" — should be added somewhere in the discovery rules as well.

The protective-order provisions of Rule 26(c) do not seem to need amendment. They provide ample authority to respond on a case-specific basis "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense * * *."

Rule 56. Summary-judgment affidavits are among the papers covered by Rule "5.2." It would be possible to add a cross-reference to Rule 56.

Rule 80(c). Rule 80(c) — inevitably part of the future project to reconcile the Civil Rules with the Evidence Rules — states that whenever stenographically reported testimony is admissible in evidence at a later trial, it may be proved by the transcript. Although the proof might include filing, and a corresponding need to redact under Rule "5.2," there is no apparent need to amend Rule 80(c) to refer back to Rule "5.2."

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

JOHN K. RABIEJ
Chief

Rules Committee Support Office

September 29, 2004

MEMORANDUM TO ADVISORY COMMITTEE ON CIVIL RULES

SUBJECT: *Status of CM/ECF Project and Study of Cost-Savings Associated With It*

I have attached a report on the status of the Court Management/Electronic Case Filing project (CM/ECF) and a study containing information on cost-savings associated with the project.

The three-page report describes the status of the CM/ECF implementation in the federal courts as of June 2004. It is operational in 123 courts, including 75 bankruptcy courts and 48 district courts. "Another 16 bankruptcy courts and 29 district courts are in the process of rolling out the system." Attorney participation is impressive with 88,000 using it to make over 3 million docket entries. In general, the report gives the project a glowing stamp of approval.

In 2003 the Judicial Conference's Committee on Information Technology requested a study "to determine whether electronic public access fees impact specifically attorney's acceptance of the CM/ECF system." The study was conducted by a consulting firm, PEC Solutions, Inc. In determining whether assessing fees reduced attorney participation, the study examined the offsetting cost savings realized by attorneys using the system. A discussion of the attorneys' cost savings can be found on pages 8-9, 12, and 18-24.

The study provides some indirect information on the cost savings for courts. It documents the specific ways attorneys save money using the system, several of which likely will apply to the courts, while others likely will result in less work for the courts. A discussion of revenue enhancements derived from CM/ECF for the courts is also given on pages 36-40.

John K. Rabiej

Attachments

Status Report: Electronic Filing in the Federal Courts: 2004

by Sharon D. Nelson, Esq. and John W. Simek

Sharon D. Nelson, Esq. and John W. Simek are the President and Vice President of Sensei Enterprises, Inc., (www.senseient.com) a computer forensics and legal technology firm based in Fairfax, VA. They can be reached by email at sensei@senseient.com or phone at 703-359-0700.

A well deserved drum roll please! Without any fanfare, the Administrative Office of the U.S. Courts is quietly changing the way federal courts do business, court by court. When the AO first announced that it would have its case management/electronic case filing system (CM/ECF) operational in all federal courts by 2005, the pronouncement was greeted skeptically. After all, state e-filing projects were bogged down, the economy wasn't cooperating, and the whole project seemed extraordinarily massive. This is now the third report the authors have compiled on the status of electronic filing in the federal courts, and it looks as though next year's report will announce the completion of the AO's mission, on time and on budget.

Here are the very impressive statistics: As of June 2004, CM/ECF was fully operational in 123 courts, including 75 bankruptcy courts and 48 district courts. Another 16 bankruptcy courts and 29 district courts are in the process of rolling out the system. CM/ECF is rolled out in waves, with nine courts being rolled out every two months. Remarkably, the timeline adopted at the initiation of this project in 1995 has remained largely in place. Also, remarkably, the cost of instituting the system has dropped, to about $50,000 per court, while the speed of the system has more than doubled. This is partly due to reduced equipment cost and the conversion to a Linux operating system.

Gary Bockweg, the AO's Project Director for CM/ECF, reports that the AO has encountered only one significant delay, with respect to electronic filing in the appellate courts. Because the appellate court functionality differs greatly from district court functionality, the appellate courts defined substantially different requirements for their case management system. Rather than merely modifying existing district court software, as had been planned, the developers had to create a wholly new system for the appellate courts. It is also true that the appellate courts have not shown the depth of interest in electronic filing manifested by the bankruptcy and district courts. This may have to do with the fact that appellate courts tend to be more traditional or that due to the differences in their processes, appellate courts may not expect the same benefits that the district and bankruptcy courts are seeing.

The e-filing statistics for May 2004 are really striking. Some fourteen million cases were being handled by the CM/ECF system. A total of 88,000 attorneys were using the system, and 127,000 new cases were opened. Some 3,300,000 docket entries were made in May. On a humorous note, in this increasingly complex world, the AO found itself tagged by blacklists as a spammer when it sent out thousands of copies of the same e-mail notification in the Enron case. The AO spent some time trying to unravel the mess. But as is clearly evident from the stats, this is a well-oiled machine in constant use.

As the economy floundered, the federal courts continued to have funding available for their CM/ECF implementation through revenue generated by the judiciary's "PACER" (Public Access to Court Electronic Records) program, which generated approximately $27,000,000 in revenue last year. Where does all the money come from? Many people are surprised to find that court data is invaluable to many industries, including credit card companies, banks, realtors, marketing companies–the list goes on and on. While there are no added fees for those filing electronically or receiving their one free access to any new filing in their own case, the court information is also made available electronically to the public for a fee of

seven cents per page. Understandably, the AO is pro-PACER and its revenue generation. This may well stir a privacy concern for those whose data is being sold, but at the moment, the public seems largely unaware that court data has become electronic gold. As Bockweg noted cheerfully, "We are pleased to have access to this money. Congress has authorized the judiciary to assess reasonable user fees for its electronic public access program, and this has enabled us to keep the service going." In fact, much of this data gathering is automated, and has become so intense that it has occasionally threatened to bog the system down. In response, the AO has asked some of the most active data gatherers to adjust their procedures so that the activity is done at night, when normal system access is low. It remains to be seen whether privacy advocates will cry "foul" at this source of revenue.

Some elements of the federal e-filing system remain unchanged. The AO's philosophy has been to make e-filing permissive rather than mandatory. While that once seemed worrisome, and skeptics fretted that participation would lag, this train is now moving so fast that everyone seems eager to jump on board.

Just as reported in previous installments, the AO is struggling mightily to stay current with the latest web browsers and doing a credible job, lagging only slightly behind the most up-to-date versions.

As also reported previously, the AO is playing a waiting game with XML and continuing to monitor its progress elsewhere. One element of the CM/ECF system that surprises some observers is that it still uses a user ID and password rather than digital signatures. As Bockweb notes, this simple system has been working just fine and has not thus far presented any security issues. Though he expects digital signatures to be adopted at some point in the future, there are no immediate plans for their adoption.

One major change is that electronic commerce has now been melded with the system, and more and more courts are permitting fees to be paid online.

The universality of the system seems to appeal to all the courts using it, so fairly minimal use has been made of their ability to modify the code. More frequently, courts have supplemented the core code with their own set of local instructions, news, and procedures. If the core code is touched, the court modifying it is also responsible for handling the replication and maintenance of the code in the event of a disaster recovery event.

The "Public Access v. Privacy Rights" debate continues and Bockweb notes wryly that the AO is prepared to "shift with the winds" as dictated by the changing methodologies of balancing both rights. In 2001, the Judicial Conference issued its rules in civil cases, requiring that "personal data identifiers" such as Social Security numbers, dates of birth, financial account numbers, and names of minor children be modified or partially redacted. Social Security cases were excluded from the system entirely. At that time, criminal cases were also generally excluded, but that has now changed.

Public Access to Electronic Criminal Case Files

In March, 2002, the Judicial Conference approved the establishment of a pilot project that would allow 11 courts, ten district courts, and one court of appeals, to provide remote electronic access to criminal case files. A study of these courts conducted by the Federal Judicial Center did not find any instances of harm due to remote access to criminal documents.

After further study and deliberation, the Judicial Conference adopted new policies with respect to remote access to criminal case files in September of 2003. In general, the policy states that documents that can be accessed at the courthouse should be accessible remotely. There are some restrictions. The policy states in part:

Upon the effective date of any change in policy regarding remote public access to electronic criminal case file documents, it is required that personal data identifiers be redacted by the filer of the document, whether document is filed electronically or in paper, as follows:

1. Social Security numbers to the last four digits;
2. Financial account numbers to the last four digits;
3. Names of minor children to the initials;
4. Dates of birth to the year; and
5. Home addresses to city and state.

The following documents are not to be included in the public case file and are not made available at the courthouse or via remote electronic access:

1. Unexecuted summonses or warrants of any kind;
2. Pretrial bail or presentence investigation reports;
3. Statements of reasons in the judgment of conviction;
4. Juvenile records;
5. Documents containing identifying information about jurors or potential jurors;
6. Financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
7. Ex parte requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act; and
8. Sealed documents.

Courts maintain the discretion to seal any document or case file *sua sponte*.

Security remains a constant concern, exacerbated by the injection of terrorist activities as part of the daily culture. The AO works with the Department of Homeland Security and the National Security Agency to secure court records, and thus far, has been very successful. The federal system utilizes a "dirty" server accessible to the public with the court's data residing on a "clean" server protected by a firewall. Thus far, the system has foiled hundreds of thousands of "rattlings at the doorknob" though the AO is anything but complacent. As part of the national infrastructure, court records are potentially a valuable target for terrorists and the AO remains alert to the ever-morphing potential security vulnerabilities. Currently, court databases are replicated in Virginia and Missouri, and further replications are anticipated. It may actually be safer to have data for the Eastern part of the U.S. replicated in the West, and vice versa, a concept that is presently being studied. With current software, only a single replication is possible, but that software will shortly be replaced and multiple replications will then be possible, thereby further reducing security risks.

At one point, the Western District of Kentucky helped test the system by losing their outside server, and then activating the replicated data server. Their system failure resulted in a test of the AO's "failback" procedures, which raised concerns about the methodology used to return to a normal production environment following a failover. The AO continues to work to make such transitions as smooth as possible. The AO has also allowed controlled "white hacking," in which security specialists attempted to hack into the CM/ECF system. While the results mandated some minor fixes, the AO breathed a happy sigh of relief when the experts were unable to effect any major intrusions.

Asked to sum up the general reaction, Bockweb notes happily, "It is rare to hear anything negative. Most courts seem to really enjoy the benefits and those who have already implemented are looking forward to getting more and more 'nice to have' features." Some states, stymied in their own e-filing efforts, have asked the AO for its CM/ECF system, but Bockweb notes that the AO can't afford to devote staff resources to working with the states. Also, because the system hasn't been packaged as an "off the shelf" system, it would be very hard for anyone else to bring it up state by state, or court by court, in accordance with local needs. Still, the AO is looking at the issues to see if it can ultimately assist the states. In the meantime, the "little engine that could" keeps chugging along, and it looks very much as though it will make it to the station on time. ●

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
of the
JUDICIAL CONFERENCE OF THE UNITED STATES

October 25, 2004

Honorable Sidney A. Fitzwater
United States District Court
1520 Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street
Dallas, TX 75242

Dear Judge Fitzwater:

I received a copy of a letter addressed to you from Peter D. Keisler, Assistant Attorney General, Civil Division, U.S Department of Justice dated October 15, 2004, regarding the E-Government Act and Immigration cases. Mr. Keisler explains that this letter is intended to provide the E-Government Rules Subcommittee with information in support of the Department's request that immigration cases be exempt from electronic filing and any associated redaction requirements in the privacy rules that the subcommittee is charged with drafting. Judge Jim Haines and I have reviewed the letter on behalf of the Committee on Court Administration and Case Management and our views regarding the Department's request are explained below. Please feel free to share this letter as you see fit with the various Advisory Committees as they consider the draft template at their meetings.

We certainly do not doubt that there has been a notable increase in immigration cases making their way to the federal courts. Nor do we doubt that redacting personal identifiers from lengthy administrative records in all of these cases would require an extraordinary amount of time and resources. However, it appears to us that a great deal of the concern expressed over redaction relates to the practicality rather than the necessity of redactions. The increase in the number of cases appears to us to mitigate in favor of the greater access that would be achieved by electronic availability of these cases.

That said, we propose a compromise provision that would exempt the administrative record in immigration cases from electronic filing, and associated redaction requirements, until such time as a system is perfected at the administrative level to redact the administrative record

at the time it is prepared, but still require electronic filing, with any necessary redactions, for all documents prepared for original filing with the district or appellate court. This recognizes the unique concerns raised by the voluminous administrative records and is similar to the way administrative records are treated in Social Security cases. We are hopeful that this will be acceptable to the Department.

Thank you for considering our opinion on this important issue. Please do not hesitate to contact me or Abel Mattos of the Court Administration Policy Staff at the Administrative Office on 202-502-1560 if you have any questions.

Sincerely,

John W. Lungstrum

John W. Lungstrum

cc: The Hon. Jim Haines
The Hon. David Levi
Abel Mattos
John Rabiej
Dan Capra

TARRANT COUNTY

THOMAS A. WILDER
DISTRICT CLERK

October 25, 2004

Lisa Hobbs
Rules Attorney
Supreme Court Building
Room 104
201 W. 14th
Austin, Texas 78701

Dear Lisa:

Pursuant to our phone conversation, I am offering some comments for your consideration in drafting a rule for access to court records.

The 16-3 vote taken at the Judicial Council meeting was posited as a vote for "free and unrestricted access" to court records as proposed by County Clerk Dianne Wilson vs. restricted access with a subscriber agreement as we do here in Tarrant County. Ms. Wilson and I both testified and answered questions about our respective systems.

However, the document sent to me from Elizabeth Kilgo presents several problems that would negatively impact our current system in Tarrant County which was approved by our judiciary as evidenced by court orders included with the brief I sent you from Senator Chris Harris. Harris County would also have problems for the same reasons as I and should be contacting you as they are planning and have funded a system similar to mine which recently won a "Best Practices" award from the Texas Association of Counties.

I am appreciative of the opportunity for input and offer the following comments that track what Ms. Kilgo sent you titled "Rule 14".

Areas of major concern:

14.5 (d)(1)
Case records other than Court Created records
This section seems to create a two tiered system that treats court-created records differently than other records filed in the case. If adopted, this would create real problems for the clerk who would have to split the imaged case file into two parts: one to be open with no subscriber agreement and the rest of the file to be under a subscriber agreement. This is not only unworkable due to backfile conversions that convert microfilm to imaged product and which contain the whole case file, at least that which is open to the public at the courthouse. It requires

401 W. BELKNAP, FORT WORTH, TEXAS 76196-0402
(817) 884-1574

a clerk to separate the paper case file into two parts which could result in confusion and inaccuracies. Also, a viewer of the documents would have to go to two places to view the whole file which is inefficient and more costly. Please consider making the whole case file that is open at the courthouse accessible from a remote computer only with a subscriber agreement and application that has appropriate information about the subscriber as we do here in Tarrant County. This system has been used for ten years with no misuse of court data and no breach of security.

14.5 (d)(3)
Family Code proceedings:
Please consider deleting this section because if the paper file can be accessed at the courthouse, why penalize the remote user if they are required to sign a subscriber agreement, fill out an application and pay a reasonable fee. The doctrine of "practical obscurity" is maintained with this method and yet keeps the burden off the clerk of having to split the paper file when being imaged.

14.6 (a)(5)
Date of Birth: Prohibiting use of the date of birth creates another large problem. When someone searches a record especially a criminal record, date of birth is essential because we need a unique identifier to distinguish between people of the same name. No matter how unusual the name, we will have multiple "hits". Using date of birth allows us to select the appropriate individual and the remote user needs this even more. Court clerks have SS #'s in many cases but outside subscribers do not hence the need for date of birth so a subscriber won't pick the wrong person. Subscribers like employers, landlords, military recruiters and others wouldn't want to deny some a job or apartment because they couldn't differentiate between criminal histories of people having the same name. Also, there are many places to obtain date of birth so raising a barrier to the identity there in this way isn't very effective. Even allowing the use of the month and year as expressed in 14.6 (d)(2) would lower the accurate identification of criminal history searches since we could easily have people with the same name, month/year. The further delineation using the day is really needed.

14.10
Costs for copies of case records;
Currently, we do not charge for copies of case records downloaded through our web access subscriber system since that privilege is included in our price of $35.00 per month that each subscriber pays. However, if it becomes the Supreme Court's decision to impose the cost contained in this section, our copy cost at the courthouse would be reduced from .35 to .12 resulting in an immediate loss to Tarrant County of over $150,000 each year. Our authority to charge .35 per paper copy is derived form Government Code 51.318 and 51.319 and our work flow study. Our cost is less that what the study says to be cautious. We have always taken the position that since judicial records are exempt form the Public Information Act, then they are also exempt from the fee schedule mandated by the Act. This fee schedule doesn't come close to the actual cost of copies and would cause an unfunded mandate that is both unfair and unnecessary. Why would the court want to inject itself into a local matter? Please consider deleting this section or simply provide wording that would allow counties to set costs for remote access and/or paper copies that are consistent with 51.318 (8) and 51.319 (3). My judges require me to make a recommendation to Commissioner's Court each year about the price of the remote computer access. Commissioners' Court has accepted this recommendation for the last 10 years. Of course, we make every effort to only break even at best on our paper copy charge and our charge for web access by our subscribers.

Finally, it should be noted that our county has probably had the most experience with remote access to court records and has successfully merged the interests of the legitimate information seekers with reasonable barriers to the "casual snoop" as one of my judges phrased it. We have spent a great deal of time studying and planning for our system to meet the needs of the employer, landlord, news media, law firms, non-profit groups needing background checks on volunteers, title companies, lenders and more with the concerns over identify theft. The other measures mentioned in the draft document from the Judicial Council also furthers this goal many of which I proposed or supported. By modifying the draft in the fashion that I have suggested, we can continue to refine the system and provide a good road map for other counties to follow as well as resolve in advance the contests that Tarrant County and others have had on a regular basis over access to court records.

Regards,

Tom Wilder

Tom Wilder

CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

COPY

October 13, 2004

Hon. Chief Justice and Justices
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Ladies and Gentleman:

I appreciate the opportunity provided my office to offer input to the draft report *Public Access to Court Case Records in Texas.*

I recognize the importance and presumption that the public has related to accessing court case records and the essential need to implement technological advances. I too understand how these advances will increase accessibility to court documents and recognize concerns related to disseminating court case records that contain sensitive and personal information.

In the course of developing and implementing remote access to civil court case records here in Harris County, we addressed concerns expressed by the Houston Family Bar Association by making family law orders available only to practicing family law attorneys who must obtain a log in and password.

I do have concerns with some sections of the draft *Rules of Judicial Administration Rule 14. Public Access to Case Records.* I have outlined my concerns below and appreciate your consideration when approving and adopting these rules.

301 FANNIN • P.O. Box 4651 • Houston, Texas 77210-4651 • (713) 755-5734

14.4 Public Access to Case Records.

(a) Generally.

Comment: This section seems to give the court(s) authority to establish my office hours of operation. I should have the sole responsibility to establish my office hours so long as those hours of operation are not in conflict with the court. I too have two sections within my office wherein the hours of operation are 24/7. I do not agree that the courts should have authority to establish my hours of operation.

(c) Case-by-Case Basis for Access to Case Records in Electronic Form.

Comment: Limiting an individual's electronic access to a case record only if the individual is able to identify the case record by the number of the case, the caption of the case, or the name of a party poses a problem. In many instances, an individual must first conduct an electronic record search to ascertain this information so they can continue their search and access the desired record.

(g) Uniform treatment of requests.

Comment: There are occasions when requests for public access to case records may be handled outside customary or uniform procedures. Depending upon the nature of the requests, volume or type of records, and time constraints, it may become necessary to step outside what is considered uniform procedures. This section should be deleted from the rules.

14.5 Exemptions from Public Access.

(d)(1) Case Records other than Court-Created Records.

Comment: This section provides that remote access to case records, other than court-created case records, may be granted only through a subscriber type system. The inference is that court-created case records are open for inspection remotely without having to go through a subscriber type system, although the proposed rule does not refer to court-created case records. It would be a problem if we are required to have these two record types kept separate within our records management system. Under this requirement, our case management system would be responsible for differentiating between *court-created case records* versus *case records* as defined in these proposed rules. There would likely be confusion and inaccurate designations due to the fact that some documents may be considered *case records* in a civil environment and the same documents may be considered *court-created records* in a criminal environment.

(d)(3) Family Code Proceedings.

Comment: More than 70% of our civil public requests for copies are related to family court proceedings, specifically requests for copies of a divorce decree. If sensitive and personal information is kept separate from the public record, there is no reason to restrict remote access to these types of records.

(f) Public Access to Part of Case Record.
Comment: It will be very costly and time consuming if we are required to redact a portion of any case record prior to making it available for public access. The court should either rule the entire record is accessible or the entire record is kept confidential or sealed.

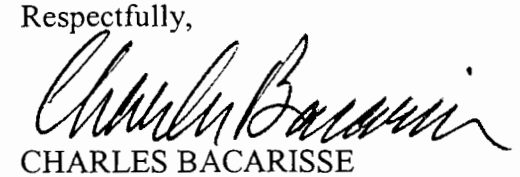
14.6 Sensitive Data.

(a)(5) date of birth
Comment: The date of birth is an essential identifier when conducting a criminal name search. It is often the only unique identifier available to help distinguish between people with similar names. Prohibiting remote access to or otherwise restricting the use of complete date of birth information, when conducting a record search, will likely result in various public and private entities taking action based on inaccurate information as a result of not being able to distinguish between similar names.

14.7 Disallowing Public Access.
Comment: This section seems to allow, one could conclude, to order, retroactive to the effective date of these rules, the redaction of sensitive or personal information within existing case records. If such sensitive or personal information is a part of a public record at the time these rules are adopted, such records should be deemed accessible or the entire record should be ordered sealed or kept confidential. To redact a portion of a case record will be very costly and time consuming.

Again, I appreciate the opportunity to provide input on this important issue. Please do not hesitate to contact me should you have any questions.

Respectfully,



CHARLES BACARISSE
District Clerk
Harris County, Texas

CEB/WM/jtm

Lisa Hobbs

om: Karl [karlw1962@yahoo.com]
ent: Saturday, November 06, 2004 6:23 AM
To: lisa.hobbs@courts.state.tx.us
Subject: Comments on Public Access to Case Records Draft Rule

Dear Ms. Hobbs:

The following are comments to Rule 14. Public Access to Case Records:

1. Under section 14.1, I would request that the following statement be added: There is a presumption that all Court/Case records shall be made available to the public pursuant to the Texas Constitution.

2. I am in complete agreement regarding any limitations to data imaged or stored electronically.

3. Under Section 14.5 a. & b., The rule should be renamed as follows: "Denial of Public Access"

4. Under Section 14.5, As an officer of the Court, and in the interest of justice, I would request that the Rule be amended to allow licensed attorney's access to the actual court records without restrictions, unless the records are specifically sealed by the judge.

Under Section 14.5, the rule should be amended to require the clerk to publish the actual citations of Federal and/or State laws which the clerk is relying upon to deny public access to court records.

6. Under Section 14.5, public access should not be restricted based upon court rule.

7. I am opposed to Section 14.6 in its entirety. In the interest of justice, and pursuant to Federal and State law it is not lawful to restrict what a person can place in a pleading to a Texas Court. There are currently adequate remedies in place that allow a judge to strike pleadings or to seal court records where appropriate.

8. I would request that a Section be added that a allow a member of the public to appeal a clerk's restriction of court records to the administrative judge in the county where the case records are located.

9. I am strongly opposed to Section 14.4 (h) that allows for identification of a requestor and believe that the public has a right to privacy in exercising their constitutional rights without unneccessary government interference.

Respectfully submitted,

Karl Weston
Attorney at Law
PO Box 131991
Houston, TX 77219

(281) 235-0448
karlw1962@yahoo.com

Lisa Hobbs

From: Tom Wilder [TWilder@TarrantCounty.com]
Sent: Wednesday, November 10, 2004 3:13 PM
To: Lisa Hobbs
Subject: FW: Access to Court Records

Lisa:

Pursuant to my last e-mail of today, it appears that 14(e) on page 3 has in the last sentence "The conditions of use provisions may not apply to public access to the court-created records of the court". This would seem to prohibit us from including court-created records in a subscriber agreement which would contain the other provisions of 14(e). If this is the case, I would request deletion of the last sentence so that we could allow access to all our file under the protection of a subscriber agreement as we do today. This sentence seems to require a split file.

Regards,

Tom Wilder

Thomas A. Wilder
Tarrant County District Clerk
401 W. Belknap, 3rd Floor
Fort Worth, Texas 76196-0402
dclerk@tarrantcounty.com
Ph: 817-884-1574
Fx: 817-884-1484

From: Tom Wilder
Sent: Wednesday, November 10, 2004 2:02 PM
To: 'Lisa Hobbs'
Subject: RE: Access to Court Records

Lisa:

This would still be a problem since our county clerk and sheriff are trying to put court data on free and open websites. Are you saying that local judges can order it to be combined as our current order requires for both county and district courts? In other words, can local court orders prevail for web access?

Thanks,

Tom

Thomas A. Wilder
Tarrant County District Clerk
401 W. Belknap, 3rd Floor
Fort Worth, Texas 76196-0402
dclerk@tarrantcounty.com
Ph: 817-884-1574
Fx: 817-884-1484

From: Lisa Hobbs [mailto:Lisa.Hobbs@courts.state.tx.us]
Sent: Wednesday, November 10, 2004 1:00 PM
To: Tom Wilder

Subject: RE: Access to Court Records

Tom:

I have finally had the chance to review your letter carefully and appreciate your input. I just wanted to let you know that, under my reading of the Proposed Rule 14, you would be able to have court-created records and party-created records both available on your subscriber system. Rule 14(d)(1) is one of permission, not restriction. In other words, the rule *allows* a court to place court-created records online without a subscriber system, but does not *require* a county with a subscriber system to make court-created documents available without a subscriber system.

Thanks,
-- Lisa

-----Original Message-----
From: Tom Wilder [mailto:TWilder@TarrantCounty.com]
Sent: Monday, October 25, 2004 5:32 PM
To: lisa.hobbs@courts.state.tx.us
Cc: District Clerk
Subject: Access to Court Records

Lisa:

Please consider the attached when drafting your rule. Our county has a tremendous amount of money invested in our E-Gov Systems including my web-access. By doing the rule as currently drafted by Elizabeth, we will have a negative impact on our revenue which is intended to partially pay for the system.

I hope you will allow me to visit with you before the final draft goes to the court.

Also, is there a meeting of the Rules Committee in November and, if so, when is it?

Best Regards,

Tom Wilder

Thomas A. Wilder
Tarrant County District Clerk
401 W. Belknap, 3rd Floor
Fort Worth, Texas 76196-0402
dclerk@tarrantcounty.com
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B. Findings from Survey of State Court Administrators

Prior to discussing the findings of the survey of state court administrators, it first must be noted that the data from these surveys found in Tables 1, 2 and 3 was collected and analyzed in September 2004. The issues of public access and privacy interests in electronic access policies governing court records were being debated in most states while this research paper was being written and many of the states responding to the survey of state court administrators have policies that were in some stage of development by their administrative offices or review by their states' highest courts. States that had electronic access policies already in place were also undergoing additional review of their existing policies with privacy interests at issue. By publication date of this research paper, May 2005, it is expected that the work of these states on their electronic access policies will have continued and the reader is advised to contact the respective state court administrative offices for updated information on that state's policy development and adoption.

Most notably, the surveys demonstrated that of the 40 state court administrative offices that responded, 33 (83%) have statewide electronic access to court records policies in place or in some stage of development. Significantly, 85% of those policies have either been adopted since 2002, when the CCJ/COSCA guidelines were published, or are currently undergoing review. All but one are the creation of the state court administrator's office or a committee appointed by the state's highest court; Virginia's policy was developed by a legislative committee. Most (70%) provided a period of public comment in the policy development process.

With the exception of a very few, most courts responding to the survey do not publish pleadings or motions online. Rather the documents that receive the most public exposure via electronic access are those created by the court itself – its dockets, calendars, indexes, registers

of actions, and case dispositions. Only 12% of the responding states indicated that images of actual documents filed by parties with the court were made available by electronic access. Access to these documents in the other 88% of responding states' court files are still publicly available, but require an in-person visit to the courthouse to view the paper file or a public access terminal. Kentucky described its rationale on the differences in its policy based upon the distinctions between accessing electronic and paper records:

> The position of the Kentucky Court of Justice was simple – one requires you to go to a certain building to access the information and the Internet made the information available to the world. Restrictions are applied if you go to the courthouse by distance, hours of operation, operational needs of the court, etc. We simply applied reasonable restrictions based on the business interests of the court and public needs for access to the information.[1]

Of those state court systems that have electronic access policies and completed the survey, there were few states that restricted access based on use of the information or provided different levels of access to information for different users. Some courts, however, did provide more information to members of the state bar in good standing and executive branch law enforcement officers, than they provided to the public. Also, some state statutes prohibited commercial use of information acquired through the courts' electronic access systems. Most state courts that responded do provide bulk data access to court record information (65%). Seventy-nine percent of state courts that provide electronic access and completed the survey, charge a fee for electronic access to the court's records.

A copy of the blank survey distributed to the members of the Conference of State Court Administrators is found at Appendix I. Tables 1, 2 and 3 follow this discussion and provide a

---

1. Survey response from Ed Crockett, General Manager, Pretrial Services, Kentucky Administrative Office of the Courts.

comparative view of the survey responses. A more detailed examination of four of these states' policies and the processes used to develop those policies is described in the next section.

TABLE 1 – State Court Administrator Survey – Electronic Access Policy Development

STATES	Responded to Survey	Provides Statewide Electronic Access	Has Statewide Electronic Access Policy	Policy Implemented (Revised)	Policy Development Process	Opportunity for Public Comment	Current Status of Policy
Alabama	**Yes**	Yes	Yes	1988	AOC	No	Implemented
Alaska	**Yes**	Yes	Yes	1994	AOC	No	Committee review (S.Ct. appt'd 2003)
Am. Samoa	No						
Arizona	**Yes**	Yes	Yes	1997 (1999) (draft 2002)	Ct. Comm.	Yes	Under review (approval in 2005)
Arkansas	**Yes**	No	No (developing)	N/A	N/A	N/A	In development
California	**Yes**	Yes	Yes	2002 (2004)	Jud. Council	Yes	Adopted
Colorado	**Yes**	Yes	Yes	1998	Ct. Comm.	Yes	Under revision
Connecticut	**Yes**	Yes	Yes	2004	AOC	Yes	Adopted
Delaware	No						
D.C.	No						
Florida	No						
Georgia	**Yes**	No	Yes (by statute)				Under review
Guam	**Yes**	Yes	No (developing)				In development
Hawaii	**Yes**	Yes	No (developing)	(draft 2004)	AOC	Yes	Under review
Idaho	**Yes**	No	Yes (by rule)				Under review
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	**Yes**	No	No (developing)	N/A	AOC	Unknown	In development
Kentucky	**Yes**	Yes	Yes	2001	AOC	No	Adopted
Louisiana	No						
Maine	**Yes**	No	No (developing)	N/A	Ct. Comm.	Yes	In development
Maryland	**Yes**	Yes	Yes	2004	Ct. Comm.	Yes	Adopted
Massachusetts	No						
Michigan	**Yes**	No	No	N/A	N/A	N/A	N/A
Minnesota	**Yes**	Yes	Yes	1987 (draft 2004)	Ct. Comm.	Yes	Under review
Mississippi	No						
Missouri	**Yes**	Yes	Yes	1998 (2000)	Ct. Comm.	Unknown	Adopted

TABLE 1
State Court Administrator Survey
Electronic Access Policy Development

TABLE 1 (cont.) – State Court Administrator Survey – Electronic Access Policy Development

STATES	Responded to Survey	Provides Statewide Electronic Access	Has Statewide Electronic Access Policy	Policy Implemented (Revised)	Policy Development Process	Opportunity for Public Comment	Current Status of Policy
Montana	**Yes**	No	No	N/A	N/A	N/A	N/A
Nebraska	**Yes**	Yes	Yes	2003	Ct. Comm.	No	Adopted
Nevada	**Yes**	No	No	N/A	N/A	N/A	N/A
New Hampshire	**Yes**	No	No (developing)		Ct. Comm.	Yes	In development
New Jersey	**Yes**	Yes	Yes	1996	Ct. Comm.	Yes	Adopted
New Mexico	No						
New York	No						
North Carolina	**Yes**	Yes	Yes	Unknown	AOC	Unknown	
North Dakota	**Yes**	Yes	No (developing)		Ct. Comm.	Unknown	Under review
No. Mariana Isl.	**Yes**	No	No	N/A	N/A	N/A	N/A
Ohio	**Yes**	Yes	No (developing)		Ct. Comm.	Unknown	In development
Oklahoma	No						
Oregon	**Yes**	Yes	Yes	1991 (2003)	AOC	No	Implemented
Pennsylvania	**Yes**	Yes	Yes	1994 (1997)	AOC	No	Adopted; new policy in review
Puerto Rico	No						
Rhode Island	**Yes**	Yes	Yes	2002 (draft 2004)	AOC	Yes	Under review
South Carolina	**Yes**	No	No	N/A	N/A	N/A	N/A
South Dakota	**Yes**	No	Yes	2004	AOC	Yes	Adopted
Tennessee	**Yes**	No	No	N/A	N/A	N/A	N/A
Texas	**Yes**	No	No (developing)	(draft 2004)	Ct. Comm.	Yes	Under review
Utah	**Yes**	Yes	Yes	1996 (draft 2004)	Ct. Comm.	Yes	Under review
Vermont	**Yes**	Yes	Yes	2002	Ct. Comm.	Yes	Promulgated
Virginia	**Yes**	Yes	No (developing)		Leg. Comm.	Unknown	In development
Virgin Islands	No						
Washington	**Yes**	Yes	Yes	1995 (1999)	Ct. Comm.	Yes	Under review
West Virginia	No						
Wisconsin	**Yes**	Yes	Yes	2003	AOC	No	Implemented
Wyoming	**Yes**	No	No	N/A	N/A	N/A	N/A

TABLE 2 – State Court Administrator Survey – Information Available by Electronic Access and Method of Access

STATES	Responded to Survey	Information Available Electronically	Information Restricted from Electronic Access	Method of Access	Bulk Data Electronic Access	Bulk Data Restricted	Distribution Method of Bulk Data
Alabama	**Yes**	Case info.	No	Internet	No	N/A	N/A
Alaska	**Yes**	Not decided	Not decided	Unknown	Yes	Unknown	Unknown
Am. Samoa	No						
Arizona	**Yes**	Case docs, hist.	Yes	Not online	Yes	Non-confid.	Download
Arkansas	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
California	**Yes**	Civil case docs Other-docket	Yes	Internet	No	N/A	N/A
Colorado	**Yes**	ROA's	Yes	Internet	No	N/A	N/A
Connecticut	**Yes**	Docket info.	Yes	Internet	Yes	Yes	CD
Delaware	No						
D.C.	No						
Florida	No						
Georgia	**Yes**	Not decided	Not decided	Not decided	Not decided	Not decided	Not decided
Guam	**Yes**	Docket info.	Yes	Internet	Yes	Yes	Unknown
Hawaii	**Yes**	Docket info.	No	Internet	Yes	Yes	Tape, FTP
Idaho	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	**Yes**	Docket info.	Yes	Internet	No	N/A	N/A
Kentucky	**Yes**	Docket info.	Yes	Internet	No	N/A	N/A
Louisiana	No						
Maine	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Maryland	**Yes**	Docket info.	No	Internet	Yes	Unknown	Unknown
Massachusetts	No						
Michigan	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Minnesota	**Yes**	Ct-created docs	Yes	Internet	Yes	Yes	Unknown
Mississippi	No						
Missouri	**Yes**	Docket info.	Yes	Internet	No	N/A	N/A

TABLE 2
State Court Administrator Survey
Information Available by Electronic Access and Method of Access

TABLE 2 (cont.) – State Court Administrator Survey – Information Available by Electronic Access and Method of Access

STATES	Responded to Survey	Information Available Electronically	Information Restricted from Electronic Access	Method of Access	Bulk Data Electronic Access	Bulk Data Restricted	Distribution Method of Bulk Data
Montana	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	**Yes**	Docket info.	Yes	Internet	No	N/A	N/A
Nevada	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
New Hampshire	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
New Jersey	**Yes**	Docket info.	No	Publ.term/ dial-up	Yes	No	Tape or CD
New Mexico	No						
New York	No						
North Carolina	**Yes**	Chg/dispo.	Yes	Publ.term.	Yes	Yes	Unknown
North Dakota	**Yes**	Docket info.	Yes	Internet	Yes	No	Download
No. Mariana Isl.	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Ohio	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Oklahoma	No						
Oregon	**Yes**	Docket info.	Yes	Internet	Yes	No	Monthly CD
Pennsylvania	**Yes**	Docket info.	Yes	Internet	Yes	Unknown	Unknown
Puerto Rico	No						
Rhode Island	**Yes**	Case info.	Yes	Internet	Yes	No	Monthly CD
South Carolina	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
South Dakota	**Yes**	Case info.	Yes	N/A	No	N/A	N/A
Tennessee	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Texas	**Yes**	Not decided	Not decided	Internet	Not decided	Not decided	Not decided
Utah	**Yes**	Case histories	Yes	Internet	Yes	Yes	Varies
Vermont	**Yes**	Docket info.	Yes	Internet	No	N/A	N/A
Virginia	**Yes**	Case abstracts	Yes	Internet	Yes	Unknown	File transfer
Virgin Islands	No						
Washington	**Yes**	Docket info.	No	Internet	Yes	Yes	Qtrly. FTP
West Virginia	No						
Wisconsin	**Yes**	Docket info.	Yes	Internet	Yes	No	Download
Wyoming	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A

TABLE 3 – State Court Administrator Survey – Access by User, Use of Information, and Fee Information

STATES	Responded to Survey	Electronic Access Available by the Public	Access by Selected Users Only	Different Level of Access by Different Users	Restriction on Access Based on Use	Method of Restriction	Fees for Access
Alabama	**Yes**	Yes	No	No	No	N/A	Yes, varies
Alaska	**Yes**	Not yet	Not decided	Not decided	Not decided	Not decided	Not decided
Am. Samoa	No						
Arizona	**Yes**	Yes	No	No	No	N/A	For bulk data (programming)
Arkansas	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
California	**Yes**	Yes	No	No	No	No	No
Colorado	**Yes**	Yes	No	Yes	On compiled data requests	Written agreement	Yes
Connecticut	**Yes**	Yes	Yes	Yes	No	N/A	For bulk data
Delaware	No						
D.C.	No						
Florida	No						
Georgia	**Yes**	Not decided	Not decided	Not decided	Not decided	Not decided	Not decided
Guam	**Yes**	Yes	Yes	Yes	No	N/A	Not decided
Hawaii	**Yes**	Yes	No	No	No	N/A	For bulk data
Idaho	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	**Yes**	Yes	No	No	By statute	Unknown	Not decided
Kentucky	**Yes**	Yes	No	Yes	Yes	Agreement & tracking	No
Louisiana	No						
Maine	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Maryland	**Yes**	Yes	No	No	No	N/A	For bulk data
Massachusetts	No						
Michigan	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Minnesota	**Yes**	Yes	No	Yes	Yes	Written agreement	For bulk data
Mississippi	No						
Missouri	**Yes**	Yes	No	No	No	N/A	No

TABLE 3 (cont.) – State Court Administrator Survey – Access by User, Use of Information, and Fee Information

STATES	Responded to Survey	Electronic Access Available by the Public	Access by Selected Users Only	Different Level of Access by Different Users	Restriction on Access Based on Use	Method of Restriction	Fees for Access
Montana	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	**Yes**	Yes	No	No	Yes	Subscription	Yes
Nevada	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
New Hampshire	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
New Jersey	**Yes**	Yes	No	Yes (Attnys)	No	N/A	Bulk data
New Mexico	No						
New York	No						
North Carolina	**Yes**	Yes	No	No	No	N/A	No
North Dakota	**Yes**	Yes	No	Yes (Attnys)	Yes	Directive	Bulk data
No. Mariana Isl.	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Ohio	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Oklahoma	No						
Oregon	**Yes**	Yes	No	No	No	N/A	Yes
Pennsylvania	**Yes**	Yes	No	Yes (Gov't)	No	N/A	Yes
Puerto Rico	No						
Rhode Island	**Yes**	Yes	No	No	No	N/A	Yes
South Carolina	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
South Dakota	**Yes**	Yes	No	No	No	N/A	Yes
Tennessee	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A
Texas	**Yes**	Yes	No	No	No	N/A	Yes
Utah	**Yes**	Yes	No	No	No	N/A	Yes
Vermont	**Yes**	Yes	Yes	Yes (Crim.Just)	Yes	SCA Review	Yes
Virginia	**Yes**	Yes	No	No	No	N/A	No
Virgin Islands	No						
Washington	**Yes**	Yes	No	Yes (Crim.Just)	Yes	Directive	Yes
West Virginia	No						
Wisconsin	**Yes**	Yes	No	Yes (DistAttny)	No	N/A	Bulk data subscription
Wyoming	**Yes**	N/A	N/A	N/A	N/A	N/A	N/A

DALE WAINWRIGHT
JUSTICE
THE SUPREME COURT OF TEXAS

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November 8, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Exhibits in Court Reporter's Records

Dear Chip:

The Court would like the Advisory Committee to study the attached memorandum from Frank Montalvo, dated April 13, 2002. Judge Montalvo, who formerly chaired the Court Reporter's Certification Board, recommended that the Uniform Format Manual for Court Reporters, as well as any related court rules, be amended to clarify that any exhibit admitted, tendered in an offer of proof, or offered in evidence should be a part of the court reporter's record. In response to this recommendation, Lisa has drafted proposed revisions to several rules and court orders, including TRCPs 75a & 75b, the order issued under TRCP 14b, and TRAP 13.1. The Court would like this added to the agenda for discussion in the Nov. 12 SCAC meeting, if possible.

As always, thank you for all the hard work you do for the Court.

Sincerely,

Dale Wainwright

J. Dale Wainwright

cc: Court
Lisa Hobbs, Rules Attorney

COURT REPORTERS
CERTIFICATION BOARD

M E M O R A N D U M

To: Thomas R. Phillips, Chief Justice
Justices – Supreme Court

From: Frank Montalvo
District Judge, 288th District Court
Chairman, Court Reporters Certification Board

Subject: **PROPOSED MISCELLANEOUS ORDER**
Request Approval of Revised Uniform Format Manual
Effective September 1, 2002

Date: August 13, 2002

Dear Chief Justice Phillips and Justices of the Supreme Court:

The Board requests consideration by the Supreme Court of the following proposed *Miscellaneous Order:*

Approval of Revisions to the Uniform Format Manual for Texas Court Reporters

---

The current manual was first adopted for use by the Supreme Court in 1999. The Board approved revisions to the manual at the Board meeting on July 27, 2002, and is now submitting a draft for the Court's approval.

There is one area of confusion regarding **exhibits** that the Board respectfully requests a determination be made by the Supreme Court as to what language is applicable in accordance with Texas Statutes and Rules.

There appears to be a conflict between Rules 75a of the Texas Rules of Civil Procedure and Rule 14b. 75a says, "The court reporter or stenographer shall file with the clerk of the court all exhibits which were **admitted or tendered** on a bill of exception during the course of any hearing, proceeding, or trial."

In the Supreme Court's Order relating to retention and disposition of exhibits, it says, "In compliance with the provision 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."

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Supreme Court
CRCB – Revised Uniform Format Manual
August 13, 2002

Under the Government Code Section 52.045(b)(1), it states, "the evidence **offered** in the case."

Provided in the draft copy are three figure 5 pages (certification page for Texas CSRs) and three figure 6 pages (certification page for exhibits), on which the language regarding exhibits is presented three ways, " **admitted or tendered"** OR "**offered"** OR my recommendation, "**admitted, tendered in an offer of proof or offered into evidence"**.

Examples are as follows:

Figure 5, example 1: "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **admitted or tendered** on an offer of proof."

OR

Figure 5, example 2: "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **offered** into evidence."

OR

Figure 5, example 3 (my recommendation): "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **admitted, tendered in an offer of proof or offered** into evidence."

Figure 6, example 1: "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **admitted or tendered** on an offer of proof into evidence..."

OR

Figure 6, example 2: "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **offered** into evidence..."

OR

Figure 6, example 3 (my recommendation): "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **admitted, tendered in an offer of proof or offered** into evidence..."

Supreme Court
CRCB – Revised Uniform Format Manual
August 13, 2002

Reporters across the state continue to debate the issue as to whether they are required to retain and include in the Reporter's Record on appeal all exhibits **offered** or only those **admitted** into evidence. The Courts' decision on which form to include in the Uniform Format Manual will clarify the issue. I would respectfully suggest the appropriate language should be, "...**admitted, tendered in an offer of proof or offered** into evidence..."

Enclosed is a draft of the revised Uniform Format Manual and a proposed order, for your convenience.

If we may be of further assistance, please do not hesitate to contact Michele Henricks at:
Phone: (512)463-1747
Email: **Michele.henricks@crcb.state.tx.us**

Thank you very much for your consideration in this matter.

Sincerely Yours,

Frank Montalvo
Chairman, CRCB

FM/mlh

Enclosure(s)

PROPOSED AMENDMENTS RELATING TO EXHIBITS TO INCLUDE IN REPORTER'S RECORD

November 11, 2004

PROPOSED AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE

Rule 75a Filing Exhibits: Court Reporter to File with Clerk

The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted, tendered in an offer of proof, or offered in evidence ~~or tendered on bill of exception~~ during the course of any hearing, proceeding, or trial.

Rule 75b Filed Exhibits: Withdrawal

All filed exhibits admitted, ~~in evidence or~~ tendered in an offer of proof, or offered in evidence ~~on bill of exception~~ shall, until returned or otherwise disposed of as authorized by Rule 14b, remain at all times in the clerk's office or in the court or in the custody of the clerk except as follows:

(a) The court may be order entered on the minutes allow a filed exhibit to be withdrawn by any party only upon such party's leaving on file a certified, photo, or other reproduced copy of such exhibit. The party withdrawing such exhibit shall pay the costs of such order and copy.

(b) The court reporter or stenographer of the court conducting the hearing, proceedings, or trial in which exhibits are admitted, tendered in an offer of proof, or offered in evidence, shall have the right to withdraw filed exhibits, upon giving the clerk proper receipt therefor, whenever necessary for the court reporter or stenographer to transmit such original exhibits to an appellate court under the provisions of Rule 379 or to otherwise discharge the duties imposed by law upon said court reporter or stenographer.

PROPOSED AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

13.1. Duties of Court Reporters and Recorders

The official court reporter or court recorder must:

***

(b) take all exhibits admitted, tendered in an offer of proof, or offered in evidence during a proceeding and ensure that they are marked;

***

The Order Relating to Retention and Disposition of Exhibits dated July 15, 1987, effective January 1, 1988, is amended as follows:

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, tendered in an offer of proof, or offered in ~~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 . . .]

The Uniform Format Manual for Texas Court Reporters is amended as follows:

OFFICIAL REPORTER'S RECORD - CERTIFICATION PAGE FOR TEXAS CSRs- figure 5

THE STATE OF TEXAS)
COUNTY OF ^COUNTY NAME)

I, ^REPORTER'S NAME, Official/Deputy Official Court Reporter in and for the ^### District Court of ^County Name County, Texas, do hereby certify that the following contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof, or offered in evidence.

* I further certify that the total cost for the preparation of this Reporter's Record is $ _____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND on this, the ____ day of _____, _____.

_____

^REPORTER'S NAME, Texas CSR ^####
Expiration Date: ^##/##/##
Official Court Reporter, ^### District Court
^County Name County, Texas
^Address
^City, ^State ^Zip
^(###) ### - ####

(* To be included only in the final volume of the original of the Reporter's Record)

OFFICIAL REPORTER'S RECORD - CERTIFICATION PAGE FOR EXHIBITS - figure 6

TRIAL COURT CAUSE NO(S). ^##-###, ^##-###

^PLAINTIFF(S),	)	IN THE DISTRICT COURT
	)	
VS.	)	^COUNTY NAME COUNTY, TEXAS
	)	
^DEFENDANT(S)	)	^### JUDICIAL DISTRICT

I, ^Reporter's Name, Official Court Reporter in and for the ^### District Court of ^County Name County, Texas, do hereby certify that the following exhibits constitute true and complete duplicates of the original exhibits, excluding physical evidence, admitted, tendered in an offer of proof, or offered in evidence during the ^Proceeding Name in the above-entitled and numbered cause as set out herein before the Honorable ^Judge's Name, Judge of the ^### District Court of ^County Name County, Texas, and a jury trial, beginning ^Month ^Date, ^Year.

* I further certify that the total cost for the preparation of this Reporter's Record is $ _____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND on this, the ____ day of _____, _____.

_____

^REPORTER'S NAME, Texas CSR ^####
Expiration Date: ^##/##/##
Official Court Reporter, ^### District Court
^County Name County, Texas
^Address
^City, ^State ^Zip
^(###) ### - ####

(* To be included only in the final volume of the original of the Reporter's Record)

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November 10, 2004

By Facsimile
Justice Dale Wainwright
The Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Re: Exhibits in Court Reporter's Records

Dear Justice Wainwright:

I am in receipt of your letter of November 8, 2004 regarding exhibits in court reporter's records. The agenda for this Friday's Supreme Court Advisory Committee meeting has already been posted; however, we will post Mr. Montalvo's report on the website and discuss it at our Friday meeting. Normally, a matter such as this would be referred to our subcommittees for further discussion. I will refer this to the Rule 15-165a Subcommittee and ask David Jackson, our court reporter representative, to join as one of its members. If you would like to handle this differently, please don't hesitate to let me know.

Very truly yours,

Charles L. Babcock

CLB:abs

cc: Justice Nathan Hecht
Lisa Hobbs, Rules Attorney