SCAC MEETING AGENDA
Friday, September 28, 2018 – 9:00 am-5:00 pm
Saturday, September 29, 2018 – 9:00 am – 12:00 pm

Location: **Texas Association of Broadcasters**
502 E. 11th Street, #200
Austin, Texas 78701
(512) 322-9944

1. **WELCOME (Babcock)**

2. **STATUS REPORT FROM CHIEF JUSTICE HECHT**

Justice Boyd will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the July 13, 2018 meeting.

3. **JURY QUESTIONS IN PARENTAL TERMINATION CASES**

216-299a Sub-Committee Members:
Prof. Elaine Carlson – Chair
The Hon. David Peeples – Vice Chair
The Hon. Kent Sullivan
Alistair B. Dawson
Robert Meadows
Thomas C. Riney
Kennon Wooten

(a) Subcommittee Report Re Jury Charge in Termination Final Sept 25 2018
(b) EXHIBIT A HB 7 Task Force Report to Texas Supreme Court
(c) Exhibit B Family Code Section 161
(d) Exhibit C Charge E
(e) Exhibit D Recommended task force questions
(f) Exhibit E Minority Ground Best Interest in Same Q
(g) EXHIBIT F Majority Grounds Separate Q From Best Interest

4. **GUIDELINES FOR SOCIAL MEDIA USE BY JUDGES**

216-299a Sub-Committee Members:
Prof. Elaine Carlson – Chair
The Hon. David Peeples – Vice Chair
The Hon. Kent Sullivan
Alistair B. Dawson
Robert Meadows
Thomas C. Riney
Kennon Wooten
John Browning – Passman & Jones

(h) Social Media Subcommittee Report Sept. 22, 2018
(i) July 11, 2018 Memorandum from Justice Christopher
(j) Code of Judicial Conduct-Pre-2002 and Current Canon 5; Canon 3-B(10)
(k) Rules of Engagement
(l) ABA Formal Opinion
(m) POLITICAL ACTIVITY Opinion No (003)
(n) History of the Endorsement Provision
(o) COMMENT

5. NEW RULE ON LAWYER ACCESS TO JUROR SOCIAL MEDIA ACTIVITY

216-299a Sub-Committee Members:

Prof. Elaine Carlson – Chair
Hon. David Peeples – Vice Chair
Hon. Kent Sullivan
Alistair B. Dawson
O. C. Hamilton
Robert Meadows
Thomas C. Riney
Kennon Wooten
John Browning – Passman & Jones

(p) Final Proposed Changes to Disciplinary Rules (September 21, 2018)

6. PROTECTIVE ORDER KIT |PROTECTIVE-ORDER FORM RE: RESPONDENT'S ACCESS TO FIRE-ARMS

Legislative Mandates Sub-Committee Members:

Jim M. Perdue, Jr. - Chair
The Hon. Jane Bland - Vice Chair
The Hon. Robert H. Pemberton
Pete Schenkkan
The Hon. David L. Evans
Robert Levy
The Hon. Brett Busby
Prof. Elaine A. G. Carlson
Richard Orsinger
Trish McAllister – Texas Access to Justice Commission
Jeana Lungwitz – UT Law Domestic Violence Clinic

(q) Legislative Mandates Subcommittee-- Gun Violence Protective Orders
(r) 5.8.2012-Protective-Order-Kit-Final
(s) 18170 Petition to Enjoin Possession of Firearm
(t) 18175 Evidence To Be Considered By Court Burden of Petitioner Duration Of Re
(u) 18180 Gun Violence Restraining Order Contents Of Order
(v) 18185 Written Request For Hearing To Terminate Order
(w) PO Disclosure Form-Final Draft (003)
(x) Rule 78a-Proposed Changes Disclosure Only-Final Draft
(y) Statutory Comparison of States on Violence POs

7. LOCAL RULES

Judicial Administration Sub-Committee Members:

Nina Cortell - Chair
The Hon. David Peeples – Vice Chair
The Hon. Tom Gray
Prof. Lonny Hoffman
The Hon. David Newell
The Hon. Bill Boyce
Michael A. Hatchell
Kennon Wooten

(z) Local Rules Memo (Sept. 24, 2018)
(aa) July 13, 2018 Email from Justice Christopher to SCAC re: Local Rules
(bb) Examples of Local Rules
(cc) Examples of Standing Orders

8. PROCEDURAL RULES ON LIMITED-SCOPE REPRESENTATION

1-14c Sub-Committee Members:

The Hon. Jane Bland – Chair
The Hon. Robert Pemberton – Vice Chair
Pamela Baron
Evan Young
Trish McAllister – Texas Access to Justice Commission
Chris Nickelson – Family Law Section

(dd) Subcommittee June 28 2018 LSR Report Final
(ee) Limited Scope Representation Rules 8 and 10 (9-26 Committee Draft)
(ff) Proposed Amendments to Texas Rules of Civil Procedure 8 and 10 (9-26 redline)
(gg) LSR Draft 9-26 Nickelson proposal

9. FORMS FOR AN APPLICATION FOR INJUNCTIVE RELIEF IN CYBERBULLYING CASES

735-822 Sub-Committee Members:

The Hon. Stephen Yelenosky - Chair
Lamont Jefferson – Vice Chair
Frank Gilstrap
Pete Schenkkan

(hh) June 11, 2018 Memo re: Cyberbullying
(ii) Petition for a Cyberbullying Restraining Order
(jj) Instructions for Petition for a Cyberbullying Restraining Order
(kk) Cyberbullying Statute
(ll) S.B. No. 179
(mm) Cyberbullying Constitutional Precedents on Student Speech

***SUPREME COURT ADVISORY COMMITTEE*-RECEPTION**
5:30 – 7:00 pm
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
PHOTO SESSION @ 6:00 P.M.

Tab A

M E M O R A N D U M

TO: Texas Supreme Court Advisory Committee

FROM: TEX. R. CIV. P. 216-299a Subcommittee
Professor Elaine A. Carlson, Chair
Judge David Peeples
Alistair Dawson
Bobby Meadows
Tom Riney
Kent Sullivan
Kennon Wooten
Justice Tracy Christopher
Justice Bill Boyce

RE: Jury Charge in Parental Termination Cases

DATE: September 25, 2018

In his letter of July 28, 2018, Chief Justice Hecht asked the SCAC Subcommittee to study and make recommendations as to:

> **Jury Questions in Parental Termination Cases.**
> HB 7, passed by the 85th Legislature, directs the Department of Family and Protective Services and the Children's Commission to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship filed by the Department. In the attached report,[1] the HB 7 Task Force recommends amending Texas Rule of Civil Procedure 277 to require specific jury questions in parental termination cases and proposes a pattern jury charge. Please consider both the proposed rule amendments and the pattern jury charge.

[1] See Exhibit A: HB 7 Task Force Report

The Task Force report (i) submits several specimen jury questions[2] and (ii) recommends amending Rule 277 by adding the following sentence and comment:

> In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child.
>
> *Comment*: The rule has been amended to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. The rule has also been amended to require a separate question on best interest of the child as to each parent and each child.

Section 161.001(b)(1) of the Family Code states twenty-one grounds for terminating parental rights (subsections A through U).[3] To terminate a parent's rights to a child, the court or jury must find that:

> (1) one or more grounds (A through U) have been proved;[4] *and*
>
> (2) termination is in the child's best interest.[5]

In 1990 the Texas Supreme Court held in *E.B.*[6] that two termination *grounds* and *best interest* were properly submitted in one broad-form jury question as instructions coupled with a jury question on the ultimate issue asking whether parental rights should be terminated between child and parent.[7] The court also stressed that Rule 277 *mandates* broad-form questions whenever feasible.[8] In *E.B.*

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[2] See Exhibit D: Task Force Questions.
[3] See Exhibit B: Tex. Fam. Code § 16.001.
[4] Tex. Fam. Code § 161.001(b)(1)(A)–(U).
[5] Tex. Fam. Code § 161.001(b)(2).
[6] *Texas Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647 (Tex. 1990).
[7] See Exhibit C: Actual Question in E.B.
[8] The *E.B.* court said: "In the 1988 amendments to Rule 277 this court said broad-form submission 'shall' be used 'whenever feasible' and *eliminated trial court discretion* to submit separate questions with respect to each element of a case. Rule 277 mandates broad-form submissions 'whenever feasible,' that is, *in any or every instance in which it is capable of being accomplished. . . .* Unless

the two grounds were submitted disjunctively in the instruction, making a ten-juror "yes" answer possible even if no ten jurors agreed that either individual ground was proved. Of course, ten jurors agreed to the ultimate question of termination.

In *In the Interest of B.L.D.*, 56 S.W.3d 203 (Tex. App.—Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003), the court of appeals held on a 2-1 vote that due process required separate submissions. The concern was that a "yes" answer could conceal that groups of perhaps 5 + 5 or 7 + 3 answered "yes" to the individual grounds. The Supreme Court held that charge error had not been preserved.

I. THE TASK FORCE REPORT.

The HB 7 Task Force has recommended that the court abrogate *E.B.* by amending Rule 277 of the Texas Rules of Civil Procedure. The Task Force's recommended jury questions would effectuate three changes in the *E.B.* approach to submitting termination questions. These changes are explained below.

(1) Separate submission of each termination ground (i.e. not disjunctive).

Task Force recommendation: When the Department[9] produces evidence of two or more termination grounds and asks that those grounds be submitted, the trial court must submit each ground in a separate stand-alone question (instead of one broad-form question with the grounds submitted disjunctively as in *E.B.*).

Subcommittee recommendation: Concur with the recommendation. If the choice is between (i) *E.B.* (many different grounds submitted disjunctively) and (ii) separate submission of different grounds mandated, a majority of the subcommittee recommends that each termination ground should be submitted separately.

(2) Separate submission of "best interest" in a stand-alone question.

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extraordinary circumstances exist, a court *must* submit such broad-form questions." *Id.* at 649 (emphasis added).

[9] The Texas Department of Family and Protective Services.

Task Force recommendation: The Task Force's proposed jury questions would submit the best-interest element in a stand-alone question, separately from the termination grounds.

Subcommittee recommendation: Concur with the recommendation but would require the "best interest" question to be predicated on a "yes" answer to *one or more* of the termination grounds asked in the charge.

The subcommittee discussed two alternatives for submitting the element of best-interest: (i) each termination ground accompanied by its own best-interest question (either in one broad-form question per ground[10] or in separate predicated questions for each ground), or (ii) one best-interest question predicated on a "yes" answer to *one or more* of the several stand-alone questions addressing the grounds for termination.[11] A majority of the subcommittee supported the Task Force recommendation of a single best-interest question but predicated on a "yes" answer to one or more of the questions inquiring as to the termination grounds. Arguably, this would not present a *Casteel* problem as an appellate court would have the benefit of the jury's finding as to each distinct ground. Further, "best-interest" need not be tied to a specific termination ground but rather involves the totality of the evidence and application of the "Holley factors"—provided the jury found at least one of § 161.001's statutory termination grounds.[12]

(3) Ultimate question for the court or the jury?

Task Force recommendation: It is unclear whether the Task Force's proposed jury questions would expressly ask the *jury* whether parental rights *should* be terminated. The Task Force's proposed jury question 4 inquires:

> Do you find by clear and convincing evidence that termination of the parent-child relationship between MOTHER [and/or] FATHER and the child is in the best interests of the child?

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[10] Exhibit E.

[11] Exhibit F.

[12] The statute provides that a "court *may* order termination" based on a finding that any of the grounds set forth in subsections A through U have been established "*and* . . . that termination is in the best interest of the child." Tex. Fam. Code § 161.001(b)(1)–(2) (emphasis added). *See Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976), and *Texas Pattern Jury Charge* 218.1A (stating the *Holley* considerations for deciding a child's best interest).

Subcommittee recommendation: The subcommittee was concerned that Question 4 as worded might appear to give the *judge* the discretion *not* to terminate parental rights, *even if* the jury finds that one or more grounds have been proved *and* that it is in the child's best interest that the parent's rights be terminated. A majority of the subcommittee recommends that the ultimate question must be answered by the jury, not the court and suggests incorporating that inquiry in the best-interest question:

> As to those children named below, do you find by clear and convincing evidence that terminating the parent-child relationship is in the child's best interest **and that the parent-child relationship with *Parent* should be terminated?**[13]

II. OTHER CONSIDERATIONS

The subcommittee notes the following issues for consideration.

(1) The "ten jurors" requirement. Should the rules forbid disjunctive submission of different termination grounds because it is unfair or because it violates due process. The ten-juror and *Crown Life v. Casteel*[14] issues are analytically different. The ten-juror problem in termination cases is whether each statutory ground must be submitted in its own stand-alone question so we can be sure that ten jurors voted for a "yes" answer to any one ground. The *Casteel* problem, in contrast, is about submission of invalid theories (no law or no evidence). *Casteel* is not about how many jurors voted for different factual theories. Needless to say, a ground that is not raised by the evidence should not be submitted at all, whether in a separate stand-alone question or in a broad-form disjunctive question.

The ten-juror issue arises from criminal case law and juror unanimity. *Compare Jefferson v. State*, 189 S.W.3d 305 (Tex. Crim. App. 2006) (juror unanimity is not required for the different modes or means by the which the offense of injury to a child was committed.),*with Pizzo v. State*, 235 S.W.3d 711 (Tex. Crim. App. 2007) (juror unanimity is required for the crime of indecency with a child by contact as to the particular contact).

(2) Texas Rule of Civil Procedure 306 Requiring Recitation

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13 See Exhibits E and F respectively, for examples of these submissions.

14 *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378 (Tex. 2000).

of Specific Grounds in Judgment.

Rule 306 addresses the recitation of judgment and provides:

> The entry of the judgment shall contain the full names of the parties . . . for and against whom the judgment is rendered. *In a suit for termination of the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment* ***must state the specific grounds for termination*** . . . .[15]

The concern is that a judgment cannot fairly "state the specific grounds for termination" when two or more grounds were submitted disjunctively and the jury gave one blanket "yes" answer. Trial courts often respond to Rule 306 by simply reciting that the jury found all the disjunctive grounds. Requiring separate questions for the grounds would solve this problem. The Task Force opines that the Rule 306 requirement that a parental termination judgment must state the specific grounds arguably makes broad-form submission not feasible in parental-termination cases.

(3) Potential Appellate Consequences.

A. Because of *Casteel*, appellate courts must assess the sufficiency of the evidence supporting each of the disjunctive grounds, where challenged. But if the rules are changed and each ground is submitted separately, then whenever one ground is sufficient the opinion could discuss and affirm on that ground alone. Requiring separate submission would simplify the appellate task.

B. Section 161.001(b)(1)(M) provides that an abuse or neglect termination as to *Child A* can be the basis, without more, for losing parental rights to another child (*Child B*) in a subsequent proceeding. As a result of these collateral consequences, parents who suffer an adverse abuse or neglect termination as to *Child A* can insist that the appellate courts review all such findings in that case, before *Child B* is even born even if another ground would support termination as to *Child A*.[16]

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[15] Tex. R. Civ. P. 306 (emphasis added).

[16] *See, e.g.*, *In re K.A.F.*, No. 05-12-01582-CV, 2013 WL 3024864,at *9 (Tex. App.—Dallas June 14, 2013, no pet.). ("Because an affirmative finding that Mother's rights should be terminated based on her placing the children in dangerous conditions or engaging in endangering conduct could be used to support termination of her parental rights with respect to any future child she may have, we continue our review."); *In re J.E.M.M.*, 532 S.W.3d 874, 885 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (reviewing sufficiency of the evidence to support predicate findings under

(4) Burden on Appellants and Courts of Appeal

Appeals in parental termination cases are accelerated[17] and Texas appellate courts are told to complete their review within 180 days. When faced with an Anders brief filed by a parent's counsel, their review requires enhanced efforts. From the appealing parent's perspective, a jury charge that potentially narrows the grounds found in support of termination allows for a fairer and more focused appeal.

(5) Impact of Parental Rights Decision on Jury Charge Rules for other Cases.

The Supreme Court in *E.B.* said, "The charge in parental rights cases should be the same as in other civil cases."[18] The court may want some thoughtful SCAC discussion of reasons why a retreat from broad form and "disjunctiveness" in parental-termination cases should or should not apply to other kinds of civil cases.

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sections 161.001(b)(1)(D)&(N) of the Family Code, despite the conclusion that sufficient evidence supported court's finding under section 161.001(b)(1)(O) because the (D) and (N) finding could impact the best-interest analysis and have collateral consequences in future cases); *In re L.D.*, No. 01-17-00471-CV, 2017 WL 6374663, at *4 (Tex. App.—Houston [1st Dist.] Dec. 14, 2017, pet. denied) ("The mother's brief argues that unchallenged predicate findings can be used to support a finding that termination is in the best interest of the child, and they also can have collateral consequences in subsequent termination proceedings involving other children. . . . Accordingly, despite the fact that other predicate findings have been conceded by both parents, we will analyze the sufficiency of the evidence of endangerment grounds to support termination under subsections D or E.); *In re C.M.C.*, __ S.W.3d __, __, No. 09-18-00074-CV, 2018 WL 3387248, at *4 (Tex. App.—Beaumont July 12, 2018, no pet. h.) ("Because this is the only possible appeal of those findings, which would be binding in a future proceeding, we will address Mother's arguments" on these subsections.).

[17] *See* Tex. R. App. P. 28.

[18] 802 S.W.2d at 648.

Tab B

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9070

REPORT OF THE HOUSE BILL 7 TASK FORCE FOR PROCEDURAL RULES IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP FILED BY A GOVERNMENTAL ENTITY

Submitted to the Supreme Court of Texas on November 27, 2017

TO THE HONORABLE SUPREME COURT:

I. INTRODUCTION

The House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity ("HB 7 Task Force") was established on July 10, 2017 by the Supreme Court of Texas (hereinafter "Supreme Court"), pursuant to Misc. Docket No. 17-9070. The HB 7 Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for trial and post-trial proceedings in cases involving termination of the parent-child relationship.

The need for a revision of the rules arose from House Bill 7, enacted by the 85th Legislature (Act of May 26, 2017, 85th Leg., R.S., ch. 317), effective September 1, 2017. House Bill 7 added Section 105.002(d) of the Family Code, directing the Department of Family and Protective Services ("Department") and the Supreme Court of Texas Children's Commission ("Children's Commission") to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship (SAPCR) filed by the Department. House Bill 7 also added Section 263.4055 of the Texas Family Code (hereinafter "Family Code") directing the Supreme Court to establish procedures to address the conflict between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263 of the Family Code, as well as the period of time, including an extension of at least 20 days, for a court reporter to submit the reporter's record of a trial to an appellate court following a final order rendered under Chapter 263. In addition, the Supreme Court requested that the HB 7 Task Force examine possible reasons for the increase in parental termination appeals and make recommendations on how to address the increase. Supreme Court of Texas Misc. Order 17-9070 directs the HB 7 Task Force to advise the Court on the rules required by House Bill 7 as well as other recommendations deemed appropriate to expedite and improve the trial and appeal of cases governed by Family Code Chapter 263 no later than December 1, 2017. In formulating the recommendations, the HB 7 Task Force is to be guided by the principle that proceedings under Chapter 263 should be expedited to minimize disruption and confusion in the lives of children and parents without precluding full consideration of the issues and their just and fair resolution. House Bill 7 requires recommendations to be submitted to the Texas Legislature no later than December 31, 2017.

The Supreme Court of Texas, in Misc. Order 17-9070, appointed the following persons to the HB 7 Task Force:

Hon. Dean Rucker, Chair, Presiding Judge, Seventh Administrative Judicial Region of Texas, Midland

Hon. Debra H. Lehrmann, Justice, Supreme Court of Texas, Austin

Tina Amberboy, Executive Director, Supreme Court Children's Commission, Austin

Mark Briggs, Attorney, El Paso

Hon. Ada Brown, Justice, 5th Court of Appeals, Dallas

Audrey Carmical, General Counsel, Department of Family and Protective Services, Austin

William B. Connolly, Attorney, Houston

Lawrence M. Doss, Attorney, Lubbock

Anna Ford, Director of Litigation, Department of Family and Protective Services

Sandra D. Hachem, Assistant County Attorney for Harris County, Houston

Lisa Bowlin Hobbs, Attorney, Austin

Anissa Johnson, Attorney, Office of Court Administration, Austin

Hon. Sandee Marion, Chief Justice, 4th Court of Appeals, San Antonio

Hon. Michael Massengale, Justice, 1st Court of Appeals, Houston

Dylan Moench, Staff Attorney, Supreme Court Children's Commission, Austin

Richard R. Orsinger, Attorney, San Antonio

Hon. Paul Rotenberry, Judge, 326th District Court, Abilene

Georganna L. Simpson, Attorney, Dallas

Hon. John J. Specia, Judge (Ret.), San Antonio

Hon. Angela Tucker, Judge, 199th District Court, McKinney

Luz A. ("Lucy") Williamson, Attorney, Edinburg

Hon. Eva Guzman, Court Liaison to the HB 7 Task Force and Children's Commission's Chair, Justice, Supreme Court of Texas, Austin

Martha Newton, Rules Attorney, Supreme Court of Texas, Austin

II. PROCESS OF REVIEW

The HB 7 Task Force worked in accordance with a timeline and a work plan that outlined the issues for review. The HB 7 Task Force held one in-person meeting on August 18, 2017. Additional teleconferences were held on September 18th, October 11th, and October 18th. In addition to meetings and conference calls, the HB 7 Task Force reviewed and provided input to the Final Report.

Work Plan (Schedule and Deliverables):

08/18/17 (Fri)	HB7 TF met in Austin
09/01/17 (Fri)	8/18/17 meeting summary provided to HB7 TF
09/18/17 (Mon)	HB7 TF conference call, input collected
10/01/17 (Mon)	Report writing began
10/10/17 (Tues)	First draft of report to HB7 TF
10/11/17 (Wed)	HB7 TF conference call to discuss filing of court reporter record
10/18/17 (Wed)	HB7 TF conference call to discuss report
11/01/17 (Wed)	Second draft provided to HB7 TF
11/15/17 (Wed)	Edits completed
12/01/17 (Fri)	Report submitted to Supreme Court
12/29/17 (Fri)	Report submitted to Texas Legislature

III. RECOMMENDATIONS

The HB 7 Task Force recommends that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The Task Force further recommends that Texas Rule of Appellate Procedure (Tex. R. App. P.) 28.4(b) be amended to require that notice of appeal should be provided to the court reporter(s) who prepared the record(s) and to the trial judge who heard the case. The HB 7 Task Force determined that there is no conflict between the rules related to a motion for new trial and the filing of a notice of appeal and thus no related rule amendments are required or recommended. Finally, the HB 7 Task Force requests additional guidance from the Supreme Court on the issues

related to the increase in number of appeals. The Supreme Court provided additional guidance prior to the September 18, 2017 conference call, and granted permission for the HB 7 Task Force to take up resolution of this last remaining issue after January 1, 2018. Thus, with regard to the increase in parental termination appeals, this report contains no recommendations or further discussion. The increase in parental termination appeals and related matters will be studied in early 2018 and a report will be issued to the Supreme Court in the near future.

IV. Discussion: Broad-Form Jury Charge in Parental Termination Cases

At the August 18, 2017 in-person meeting, the HB 7 Task Force discussed: (1) Broad-form Jury Submission; (2) Motion for New Trial and Notice of Appeal; (3) Filing of the Court Reporter's Record; and (4) Increase in Parental Termination Appeals. The discussion on broad-form submission centered on the case law in this area, the history of broad-form submission, the reasoning for the practice, and the problems presented by the use of broad-form submission. In particular, the inability to determine precisely which grounds form the basis of a termination presents a burden on the appellate courts because a challenge to the sufficiency of the evidence must address each and every alleged termination ground rather than being confined to those grounds actually found by a jury. The HB 7 Task Force also discussed the movement among parent advocates to require the jury to address each ground as to each parent, due process concerns, and whether changes to Rule 277 should apply to private termination cases.

Broad-form jury charges in parental termination cases have been specifically sanctioned by the Supreme Court since *Tex. Dep't of Human Servs. v. E.B.,* 802 S.W.2d 647 (Tex. 1990). The Court ruled that Tex. R. Civ. P. 277 (Rule 277) mandates broad-form submission to be used whenever feasible. However, in 2002, the Supreme Court allowed exceptions to the requirement for broad-form submissions in *Crown Life Ins. v. Casteel,* 22 S.W.3d 378 (Tex. 2000), stating that Rule 277 is not absolute. The 10th Court of Appeals in Waco extended the application of *Crown Life,* to termination cases in *In the Interest of B.L.D.*, 113 S.W.3d 340 (Tex. 2003) stating "in termination cases, procedural due process requires a strict application of [Tex. R. Civ. P.] 292's requirement of accord by ten or more jurors" and "the disjunctive form of the charge, without more, may violate due process because it allows for the possibility of termination based on a statutory ground not found by at least ten jurors to have been violated." *Id. at 216.* The Supreme Court overturned the appellate court's ruling on the ground that the error had not been properly preserved but did not reach the merits of the argument and acknowledged the intermediate appellate courts were divided on the issue. See Appendix A for additional history related to use of broad-form submission.

The Task Force also discussed whether the Supreme Court set precedent for granulated questions when in 2012 the Court amended Tex. R. Civ. P. 306 (Rule 306) to require that in a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator. Thus, amended Rule 306 may support

that broad-form submission is no longer "feasible" under Rule 277.

At the end of the discussion, Judge Rucker appointed a subcommittee to lead the charge on drafting proposed amendments to Rule 277. Task Force members Richard Orsinger, Justice Michael Massengale, Bill Connolly, and Brenda Kinsler (a Department litigation specialist who attended the August 18th meeting on behalf of Task Force member Anna Ford), agreed to serve on the subcommittee and report back to the full committee on the conference call scheduled for September 18, 2017.

On the September 18, 2017 conference call, Task Force member Richard Orsinger noted for the group that the challenge in drafting an amended rule was dealing with multiple children and multiple parents and multiple grounds. The concept for the change proposed to the full HB 7 Task Force was to fold the ground into the question so that the individual ground would be integrated into a stand-alone question, as to the mother, and father, and as to each child separately.

The HB 7 Task Force discussed that it is a rare case that has only one mother and one father, acknowledging that there could be one mother with several children and different fathers for each child. Also, there was discussion that it is unlikely that the same termination grounds would be applicable to all parents. In other words, there could be a ground (and thus a jury question) that would relate to only one parent – or one child. Representatives from the Harris County Attorney's Office noted that even if one parent abuses a child, but not others in the home, case law holds that parental rights can be terminated on all children based on the abuse of one child and the risk presented to others in the home. Task Force member Sandra Hachem expressed concern that granulated jury questions will cause confusion. Task Force member Justice Massengale noted that it is not always going to be the case that conduct endangering one child necessarily endangers another child and a jury needs to make a determination with regard to each ground and each child noting that the statutory language found in Family Code Sections 161.001(b)(1)(D) and (E) refer to "the child," not "a child."

The Task Force also discussed the House Bill 7 amendment to Section 161.206(a-1), Family Code, which requires clear and convincing evidence for each parent in order to terminate parental rights of that parent.

At the conclusion of the September 18, 2017 call, the HB 7 Task Force agreed to recommend amending Rule 277, adding a comment to the proposed rule change, and submitting an example of jury questions to be proposed for inclusion in the Supreme Court's administrative order announcing the rule amendment. See Appendix B. Task Force member Sandra Hachem objected to amending Rule 277.

On the October 18, 2017 conference call, the HB 7 Task Force discussed Rule 277 again, including whether the rule change should apply to all terminations, private and state-sponsored. Judge Rucker notified Task Force members that he had informed the Executive Committee of the Family Law Council that the Task Force was considering a recommendation to amend Rule 277 and that the

proposed recommendation would encompass both private and state-sponsored termination cases.

Task Force member Audrey Carmical, General Counsel for the Department of Family and Protective Services, expressed concerns about potential confusion of jurors if the state moves away from broad-form submission to granular questions. Ms. Carmical was invited by Judge Rucker to submit a written statement to the Task Force of the Department's concerns. Ms. Carmical submitted a written statement on October 18, 2017, noting that while the Department acknowledges and appreciates the importance of enhancing parents' due process protections, the use of granulated submission may lead to an unintended negative impact on permanency outcomes for children in care. Specifically, prior to the *E.B.* decision, attorneys who utilized narrow form submission experienced cases in which jurors would often become confused as to which ground constituted abuse and which ground constituted neglect. As a result, nine jurors might find for termination under Family Code 161.001(b)(1)(D) but another three might find for termination under (E), failing to meet the required number of jurors to find for termination of parental rights. Ms. Carmical's note went on to say that there were situations prior to *E.B.* where a judge was "forced to appoint DFPS as Permanent Managing Conservator of the subject children, leaving them to grow up in foster care." The Department anticipates that confusion is likely to increase with the use of narrow submission as pursuant to Tex. R. Civ. P. 292(a), because the same ten or more jurors are required to agree on all answers made upon which the court bases its judgment. Ms. Carmical also requested that an analysis of *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied) from the Waco Court of Appeals in 2015 and *In re C.C.*, No. 10-16-00129-CV, 2016 WL 6808944, at *13 (Tex. App.—Waco Nov. 16, 2016, no pet.) be added as a report appendix. See Appendix C.

V. Discussion: Motion for New Trial and Notice of Appeal

The 2012 changes made to Rule 28.4, Texas Rules of Appellate Procedure, required that parental termination appeals be treated as an accelerated appeal under Tex. R. App. P. 26.1 (Rule 26.1), including the requirement that a notice of appeal be filed 20 days after the judgment is signed. Under Tex. R. Civ. P. 329b (Rule 329b), motions for new trial may be filed up to 30 days after a final judgment is signed and a trial court has 75 days to rule on the motion. The 85th Texas Legislature proposed a solution to this perceived conflict in the filed version of House Bill 7, which required a motion for new trial within five days of a final judgment in a child protection case and required the trial court to rule on the motion within 14 days. The language was withdrawn from House Bill 7 before final passage so that this matter could be examined by the HB 7 Task Force.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether five days was too short a time to properly prepare a motion for a new trial because it is unlikely that a court reporter's record could be produced in such a short amount of time. Also, there was concern that attorneys would not be able to properly review the record for errors and may therefore be motivated to file a boilerplate motion, potentially missing a point of error. The HB 7 Task Force also discussed the merits of

shortening the time for disposition of a motion for new trial in parental termination and child protection cases from 75 days to 60 days after the signing of a final order. However, it was pointed out that there is no rule or law that prohibits an attorney from pursuing both a motion for new trial and filing a notice of appeal at the same time.

This point was reiterated and discussed again during the September 18, 2017 conference call, and it was noted that a trial court's plenary power allows the court to rule on the motion for new trial even if a notice of appeal has been filed. Task Force member Justice Michael Massengale submitted additional reasons for not truncating the period for filing a motion for new trial in termination proceedings via an email sent to the Task Force on October 18, 2017, including that there may be a different lawyer handling the appeal and the new attorney will need time to become familiar with the case. Also, the motion for new trial may need to be supported by evidence, adduced either through affidavits or an evidentiary hearing.

Thus, the HB 7 Task Force recommends that time to file a motion for new trial should not be amended and to do so in the manner envisioned by the filed version of House Bill 7 would dramatically truncate the timeline and potentially damage a parent's ability to challenge error. However, the HB 7 Task Force did agree to recommend amendment to Tex. R. App. P. 28.4 (Rule 28.4) to require the attorney filing the notice of appeal to provide notice to the court reporter(s) who prepared the record(s) and the trial judge who heard the case. See Appendix D.

VI. Discussion: Filing of the Court Reporter Record

In 2011, the HB 906 Task Force appointed by the Texas Supreme Court studied the matters of time to file the reporter's record and the extension of time to file the record. In the HB 906 Task Force report submitted to the Supreme Court on October 14, 2011, the HB 906 Task Force recommended that court reporters be required to file the reporter's record within 30 days of the filing of the notice of appeal. The HB 906 Task Force also recommended that an extension or extensions could be granted by the court of appeals for good cause, not to exceed 60 days cumulatively, absent extraordinary circumstances. *Final Report of the Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship* (October 14, 2011), at pages 7 and 17. The Supreme Court did not adopt the recommendation and instead amended Tex. R. App. P. 35.3(c) to permit extensions of 10 days each in an accelerated appeal. The Court further provided in Tex. R. App. P. 28.4(b)(2) that any extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances. Since that time, court reporters have voiced concern about their ability to complete a trial record within the 10-day period while maintaining their normal court duties. Court reporters have also stated that trial courts are often reluctant to release court reporters from their regular duties to complete a trial record or hire substitute court reporters due to budgetary pressure from county commissioners' courts.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether timelines should be adjusted to account for the number of days it takes to prepare a record as well as who should have responsibility to notify the court reporter that a notice of appeal has been filed. Many court reporters had reported to HB 7 Task Force members that much of the problem stems from not receiving timely notice that a notice of appeal has been filed, and that by the time they are made aware, the deadline to file the record is upon them or has already passed.

Task Force members discussed commencing the 180-day deadline for the appellate court to resolve the appeal from the date the reporter's record is filed rather than the date notice of appeal is filed, but there was strong resistance to any changes that might delay the resolution of the appeal. General concern was also expressed that any changes that were made solely to parental termination and child protection cases would result in these cases receiving a lower priority than other accelerated appeals. Motions to extend the initial deadline for the reporter's record from 10 days to 15 days for all accelerated appeals, and to extend the initial deadline from 10 to 15 days only for child protection cases were considered by the HB 7 Task Force. Both motions failed to pass.

The HB 7 Task Force also discussed that the urgency of resolving child protection appeals outweighs a rule amendment allowing court reporters more time to file the reporter's record. This discussion was bolstered by the fact that the appellate court members of the Task Force stated that the courts of appeal are routinely granting requests for extensions of time to file the reporter record while still being able to timely issue opinions. It was also noted that the courts of appeal already have the authority to grant an extension beyond the 30 cumulative days for extraordinary circumstances, such as a lengthy jury trial.

All HB 7 Task Force members agreed that the Texas Rules of Appellate Procedure should be amended to require an attorney filing a notice of appeal to notify the court reporter at the time the notice of appeal is filed. This issue was revisited during the HB 7 Task Force's September 18, 2017 conference call and the decision was made to recommend that the attorney filing a notice of appeal also be required to notify the trial court judge who handled the trial. See Appendix D.

On the September 18, 2017, conference call, the HB 7 Task Force agreed to revisit the court reporter record issue once more and a conference call was scheduled for Wednesday, October 11, 2017. On the October 11, 2017 conference call, the HB 7 Task Force heard from three members about the volume of records created in CPS cases and that many court reporters are spending a great deal of their personal time to produce records timely. It was also reported that there is a shortage of substitute court reporters in certain parts of the state. A minority of members were of the opinion that the problem with filing the record timely is not related to whether there are 10 days or 15 days to do so, but rather the dearth of court reporter resources available throughout the state. Others expressed the opinion that if the deadline is to be extended to 15 days for this type of accelerated case, that the time to file the report record in all cases on an accelerated timetable should be adjusted to allow for 15 days rather than 10. The Task Force considered a motion to extend the time to file the reporter's

record in all accelerated appeals from 10 days to 15 days, noting that extending to 15 days encompasses two weekends for the reporter to timely file the record instead of just one. The motion passed 12-2. Subsequent to the call held on October 11, 2017, Task Force Member Judge John J. Specia, submitted a written statement on October 16, 2017, to Judge Dean Rucker, Task Force Chair, requesting that his prior vote in favor of the motion be changed to reflect that he abstained from voting. Thus the vote was revised and recorded as eleven in favor, two opposed, and one in abstention.

On the October 18, 2017 conference call, the Task Force again discussed the issue of extending the time to file the reporter's record from 10 to 15 days. Prior to the October 18, 2017 conference call, Task Force member Lisa Hobbs, in support of the Task Force recommendation to extend the time to file the reporter's record in all accelerated appeals, noted that it makes little sense to give more time solely to prepare a record in what should arguably be the most accelerated of appeals [appeals of parental termination and child protection cases] than other accelerated appeals, given the instability an appeal may create in a child's life. The HB 7 Task Force agreed to propose amendments to Tex. R. App. P 35.1 (Rule 35.1) to extend the time to file the court reporter(s) record(s) from 10 to 15 days. See Appendix E.

VII. CONCLUSION

I am honored to have again been selected to chair this Task Force of distinguished justices, judges and lawyers. On behalf of the members of the House Bill 7 Task Force, please allow me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.

DEAN RUCKER
Chair of the HB 7 Task Force

APPENDIX A

Background regarding broad-form submission was provided by Task Force Member Richard Orsinger of San Antonio, who served on the State Bar of Texas' Pattern Jury Charge Committee–Family Law that drafted the broad-form submission question for parental termination that is in use today. Orsinger explained that the Chair of that PJC Committee was U.T. Law Professor John J. Sampson, who wrote a law review article exploring the history of broad-form submission, *TDHS v E.B., The Coup de Grace For Special Issues*, 23 ST. MARY'S L.J. 221 (1991) ("Sampson"). Professor Sampson divided jury submission practice in Texas into three eras: the era from 1913-1973, where courts were required to submit issues "distinctly and separately;" the era from 1973-1988, where the courts had discretion to submit either separate questions or detailed instructions with questions in broad-form; and the era after January 1, 1988, where the courts were required to "submit ... the cause upon broad-form questions" "whenever feasible." *Id*. at 227-35 (quoting Tex. R. Civ. P. 277). Professor Sampson characterized the 1988 amendment to Rule 277 as a "radical" reform. *Id*. at 234. To add further context, Orsinger quoted the following language from Chief Justice Pope's unanimous Opinion for the Court in *Lemos v. Montez*, 680 S.W.2d 798, 801 (Tex. 1984):

> Prior to 1913 there was such a gradual accumulation of instructions considered helpful to juries, that an errorless charge became almost impossible. In 1913, to escape from the unsuccessful general charge, the Texas Legislature enacted article 1984a. Submission of Special Issues Act, ch. 59, § 1, 1913 Tex. Gen. Laws 113. The new procedure required the use of special issues that would be submitted separately and distinctly.
>
> In 1973, after sixty years, it became apparent that Texas courts, while escaping from the voluminous instructions to jurors, had substituted in the place of instructions, a jury system that was overloaded with granulated issues to the point that jury trials were again ineffective. The Supreme Court in 1973 amended Rule 277, Tex. R. Civ. P., by abolishing the requirement that issues be submitted distinctly and separately. Since that time, broad issues have been repeatedly approved by this court as the correct method for jury submission.
>
> This court's approval and adoption of the broad issue submission was not a signal to devise new or different instructions and definitions. We have learned from history that the growth and proliferation of both instructions and issues come one sentence at a time. For every thrust by the plaintiff for an instruction or an issue, there comes a parry by the defendant. Once begun, the instructive aids and balancing issues multiply. Judicial history teaches that broad issues and accepted definitions suffice and that a workable jury system demands strict adherence to simplicity in jury charges.

Given this background, the PJC Family Law Committee suggested a broad-form submission where the grounds for termination were specified in instructions, and the jury was further instructed that termination must be in the best interest of the child, and the jury was asked: "Should the parent-child relationship between PARENT and CHILD be terminated?" This instruction was used in a 1988 Travis County parental-termination case, *TDHS v. E.B.* The mother was terminated by the trial court, but the Austin Court of Appeals reversed, saying that the broad-form submission could have resulted in termination when only five jurors thought the mother had placed the child in a dangerous situation while another five jurors thought the mother had engaged in dangerous conduct, but the minimum required ten jurors did not agree that any one ground for termination existed. Sampson, at 244-45. The Court of Appeals also said that the jury question invaded the role of the trial court "to determine the ultimate legal question of whether the parent-child relationship should be terminated." *Id.*

A unanimous Supreme Court reversed the Court of Appeals, in an opinion authored by Justice Eugene A. Cook, who was Board Certified in Family Law by the Texas Board of Legal Specialization, and who wrote:

> The issue before this court is whether Rule 277 of the Texas Rules of Civil Procedure means exactly what it says, that is, "In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions."

Texas Dep't of Human Servs. v. E.B., 802 S.W.2d 647, 648 (Tex. 1990). Justice Cook went on to say:

> The charge in parental rights cases should be the same as in other civil cases. The controlling question in this case was whether the parent-child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under § 15.02 the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in § 15.02. Petitioner argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission. The standard for review of the charge is abuse of discretion, and abuse of discretion occurs only when the trial court acts without reference to any guiding principle. Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.
>
> Broad-form questions reduce conflicting jury answers, thus reducing appeals and avoiding retrials. Rule 277 expedites trials by simplifying the charge conference and making questions easier for the jury to comprehend and answer.

> Accordingly, we reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Id. at 649. Broad-form submission thus became the rule in parental-termination cases.

The pendulum on broad-form submission began to swing back in the case of *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378 (Tex. 2000), where the Supreme Court reversed a trial court for making a broad-form submission based on instructions relating to two theories of liability, one of which was valid under Texas law and the other of which was invalid. The Supreme Court wrote that Rule 277 required broad-form submission "whenever feasible," but that broad-form submission was not feasible when one or more grounds for recovery was invalid or uncertain. *Id.* at 389-90. In the parental termination case of *In the Interest of B.L.D.*, 56 S.W.3d 203 (Tex. App.–Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003), the Court of Appeals held that a broad-form submission that does not guarantee that at least ten jurors agreed on the same ground for termination violates due process of law. *Id.* at 219.

APPENDIX B

Rule 277. Submission to the Jury

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions.

The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

Comment to 2017 Change:

The rule has been amended to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. The rule has also been amended to require a separate question on best interest of the child as to each parent and each child.

Recommended Pattern Jury Charge

The following format for the submission of each of the grounds pleaded are recommended for submission to the Pattern Jury Charge Family/Probate Committee should the Supreme Court adopt the HB 7 Task Force recommendations:

Question No. 1

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 2

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER engaged in conduct or knowingly placed the child[ren] with persons who engaged in conduct that endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 3

Do you find by clear and convincing evidence that MOTHER [and/o]r FATHER constructively abandoned the child[ren] who [has/have] been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and (i) the department has made reasonable efforts to return the child[ren] to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child[ren]; and (iii) the parent has demonstrated as inability to provide the child[ren] with a safe environment.

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 4

Do you find by clear and convincing evidence that termination of the parent-child relationship between MOTHER [and/or] FATHER and the child is in the best interests of the child?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

APPENDIX C

In *E.M*., the Waco Court of Appeals, consistent with the Supreme Court's decision in *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W. 3d 647, 649 (Tex. 1990), concluded the trial court did not abuse its discretion in refusing Mother's request for a jury charge instruction requiring the agreement of 10 jurors as to any predicate act. *In re E.M*., 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied). In so finding, the Waco Court reiterated and in essence reaffirmed the Supreme Court's reasoning in *E.B*. by quoting the following passage from that case:

> The controlling question in this case was whether the parent-child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under [the predecessor to family code section 161.001] the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in [the predecessor to section 161.001]. Respondent argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission.... Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.

Tex. Dep't of Human Servs. v. E.B., 802 S.W. 3d at 649; *In re E.M*., 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied).

Notably, the decision in *E.M.* was penned by Chief Justice Gray, who was the lone dissenter in the Waco Court of Appeals decision in *In re B.L.D*., in which Justice Gray had stated:

> [T]he due process argument regarding broad form submissions in a termination case has been considered and summarily rejected by the Supreme Court. *Texas Dept. of Human Services v. E.B.,* 802 S.W.2d 647, 649 (Tex.1990). The Dosseys have not brought themselves within the *Crown Life* exception because they have not shown that any theory submitted to the jury was "an improperly submitted invalid theory." *Crown Life Ins. v. Casteel,* 22 S.W.3d 378, 388 (Tex. 2000). We fly in the face of existing Texas Supreme Court precedent on this issue by holding to the contrary.

In re B.L.D., 56 S.W.3d 203, 221 (Tex. App.—Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003).

The Waco Court of Appeals also held the trial court did not abuse its discretion by submitting a broad-form jury charge on the six termination grounds. *In re C.C*., No. 10-16-00129-CV, 2016 WL 6808944, at *13 (Tex. App.—Waco Nov. 16, 2016, no pet.). In so concluding, the Waco Court stated that:

> [L]ast year we noted that the Supreme Court has held that a trial court does not abuse its

discretion by submitting a broad-form jury charge in a termination case.

In re E.M., 494 S.W.3d 209, 229 (Tex. App.–Waco 2015, pet. denied) (citing *Tex. Dep't Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990) (op. on reh'g)).

APPENDIX D

Rule 28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(a) ***Application and Definitions.***

(1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

(2) In Rule 28.4:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

(b) ***Notice of Appeal.***

(1) Service of Notice. In addition to requirements for service of notice of appeal imposed in Rule 25.1(e), the notice of appeal must be served on the court reporter or court reporters responsible for preparing the reporter's record.

(2) Clerk's Duties. In addition to the responsibility imposed on the trial court clerk in Rule 25.1(f), the trial court clerk must immediately send a copy of the notice of appeal to the judge who tried the case.

(c) ***Appellate Record.***

(1) Responsibility for Preparation of the Reporter's Record. In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

(2) Extension of Time. The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.

(3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.

(d) ***Remand for New Trial.*** If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

APPENDIX E

Rule 35. Time to File Record; Responsibility for Filing Record

35.1. Civil Cases. The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

(a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;

(b) if Rule 26.1(b) applies, within ~~10~~ 15 days after the notice of appeal is filed; or

(c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

SCHOOL AND FIREARM SAFETY ACTION PLAN

GOVERNOR GREG ABBOTT

MAY 30, 2018

STUDY A PROTECTIVE ORDER LAW TO KEEP GUNS OUT OF THE HANDS OF THOSE MENTALLY UNFIT TO BEAR ARMS, BUT ONLY AFTER LEGAL DUE PROCESS IS ALLOWED TO ENSURE SECOND AMENDMENT RIGHTS ARE NOT VIOLATED

As of March 2018, five states have laws that allow guns to be temporarily taken away by a judge if they believe individuals pose a threat to themselves or others.[43] A proper approach must focus on quickly identifying those who pose a risk without infringing on the rights of lawful gun owners by maintaining the highest standards of due process.

Recommendation: Encourage the Texas Senate and House leaders to issue an interim charge to consider the merits of adopting a red flag law allowing law enforcement, a family member, school employee, or a district attorney to file a petition seeking the removal of firearms from a potentially dangerous person only after legal due process is provided.

"Red Flag" or "extreme risk" protective orders create a mechanism to separate a potentially dangerous person from firearms for a period of time. Texas law currently has a system where victims of family violence can seek a protective order that protects victims and the due process rights of those they seek them against. Similarly, the Texas Family Code allows for the involuntary commitment of persons who pose a serious risk of harm to themselves or others, but only under stringent constitutional protections. Properly designed, emergency risk protective orders could identify those intent on violence from firearms, but in a way that preserves fundamental rights under the second amendment.

The legislature should consider whether the existing protective order laws are sufficient, or could be amended to include emergency risk protection, or whether emergency risk protective orders should be independently created. Texas Family Code Sec. 81.007 makes a county attorney or criminal district attorney responsible for filing family violence protective orders. A mental health protective order statute would likely have similar responsibilities under a red flag statute.

Mental Health Protective Order procedures would allow law enforcement, a family member, school employee, or a district attorney to file a petition seeking the removal of firearms from a person proven to be dangerous to himself or to others. The courts would then provide that person notice and a hearing, and only upon a finding that they pose a significant risk of danger to themselves or others would the court order law enforcement to take possession of firearms. These protective orders should be for a limited duration, provide for mental health treatment, and have a clear path to the full restoration of rights and return of firearms when the person is no longer a danger.

Such protective orders may not only protect the public but also protect dangerous individuals from themselves. Suicide is the 10th-leading cause of death in the U.S., with guns being the method most used.[44] An individual is more likely to use a firearm to commit suicide than mass murder.[45] In 2016, suicide accounted for 59 percent of deaths by firearms while homicide accounted for 37 percent.[46] In that year, firearms were used in a majority (51%) of all suicide deaths.[47]

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43 "Gun-Violence Restraining Orders Can Save Lives," David French, National Review, March 1, 2018. Online at: https://www.nationalreview.com/magazine/2018/03/19/gun-violence-restraining-orders-save-lives/.

44 "Suicide Rate is Up 1.2 Percent According to Most Recent CDC Data (Year 2016)," American Foundation for Suicide Prevention, January 2, 2018. Online at: https://afsp.org/suicide-rate-1-8-percent-according-recent-cdc-data-year-2016/.

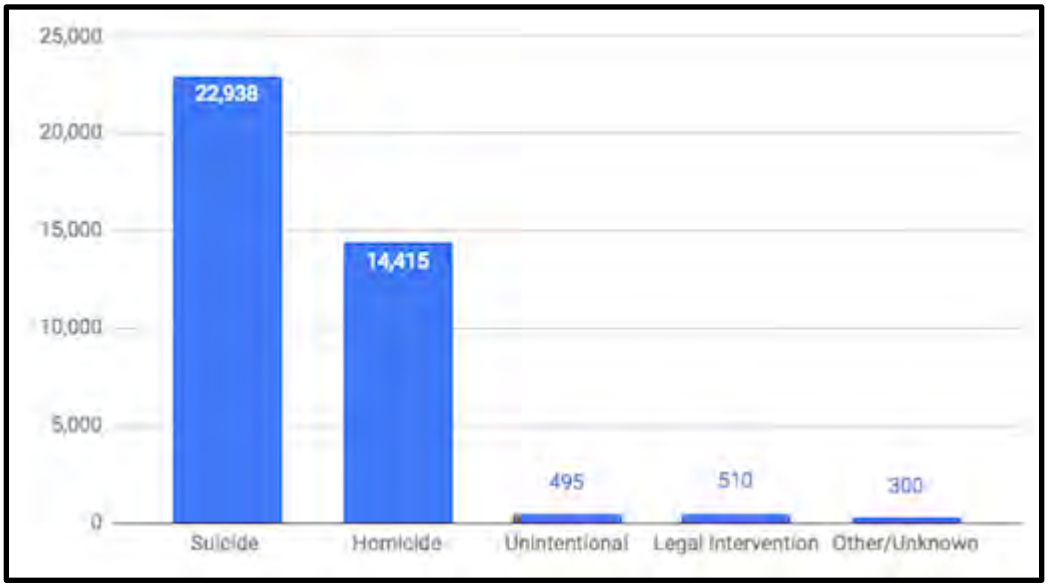
45 "Guns & Suicide: The Hidden Toll," Madeline Drexler, Harvard Public Health. Online at: https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/.

46 Injury Facts: Firearms. National Safety Council. 2017; See: http://injuryfacts.nsc.org/home-and-community/safety-topics/firearms/

47 American Foundation for Suicide Prevention, "Suicide Statistics," available at: https://afsp.org/about-suicide/suicide-statistics/.

The orders contemplated by this proposal could have been used to prevent the shootings at Sutherland Springs and at Marjory Stoneman Douglas High School in Parkland, Florida.

Deaths by Firearm in the United States (2016)



Source: Center for Disease Control

Tab C

APPENDIX B

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Held Unconstitutional as Applied by In re A.V., Tex.App.-Waco, July 11, 2001

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)
Subtitle B. Suits Affecting the Parent-Child Relationship
Chapter 161. Termination of the Parent-Child Relationship (Refs & Annos)
Subchapter A. Grounds

V.T.C.A., Family Code § 161.001

§ 161.001. Involuntary Termination of Parent-Child Relationship

Effective: September 1, 2017

Currentness

(a) In this section, "born addicted to alcohol or a controlled substance" means a child:

(1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(2) who, after birth as a result of the mother's use of the controlled substance or alcohol:

(A) experiences observable withdrawal from the alcohol or controlled substance;

(B) exhibits observable or harmful effects in the child's physical appearance or functioning; or

(C) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;[1]

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

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

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or children);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i) the department has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; and

(2) that termination is in the best interest of the child.

(c) A court may not make a finding under Subsection (b) and order termination of the parent-child relationship based on evidence that the parent:

(1) homeschooled the child;

(2) is economically disadvantaged;

(3) has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

(C) an offense that involves family violence, as defined by Section 71.004 of this code;

(4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or

(5) declined immunization for the child for reasons of conscience, including a religious belief.

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

(1) the parent was unable to comply with specific provisions of the court order; and

(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

Credits

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, § 65, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, § 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 508, § 2, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 593, § 3.30, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 86, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 4.02, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.078, eff. April 2, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 11, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 40 (S.B. 77), § 2, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 12, eff. Sept. 1, 2017.

Notes of Decisions (2367)

Footnotes

Tab D

APPENDIX C Jury Charge E.B.

Actual question in *Texas Department of Human Services v. E.B.*, 802 S.W. 2d 647 (Tex. 1990)
Ground D and E and best interests submitted together in the ultimate termination question.

For the parent-child relationship in this case to be terminated, it must be proven by clear and convincing evidence that at least one of the following events has occurred:
(1) the parent has knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or
(2) the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.
In addition, it must also be proven by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child.

Should the parent-child relationship between [appellant] and the child E.B. be terminated?
ANSWER: “YES” OR “NO”

Tab E

Exhibit C Task Force Recommended Pattern Jury Charge Parental Termination

The following format for the submission of each of the grounds pleaded are recommended for submission to the Pattern Jury Charge Family/Probate Committee should the Supreme Court adopt the HB 7 Task Force recommendations:

Question No. 1

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 2

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER engaged in conduct or knowingly placed the child[ren] with persons who engaged in conduct that endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 3

Do you find by clear and convincing evidence that MOTHER [and/o]r FATHER constructively abandoned the child[ren] who [has/have] been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and (i) the department has made reasonable efforts to return the child[ren] to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child[ren]; and (iii) the parent has

demonstrated as inability to provide the child[ren] with a safe environment.

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 4

Do you find by clear and convincing evidence that termination of the parent-child relationship between MOTHER [and/or] FATHER and the child is in the best interests of the child?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Tab F

Exhibit E (MINORITY)

Alternative submission supported by a minority of the subcommittee.
<u>Each ground and best interest submitted in one question</u>, repeated with all other pled grounds supported by the evidence, in an ultimate termination question.

[Ground D and best interest submitted together.]

QUESTION 4

Should the parent-child relationship between *Parent 1 and Parent 2* and those children named below, be terminated on the following ground?

For the parent-child relationship to be terminated in this case, it must be proved by clear and convincing evidence that:

A. The parent knowingly placed the child, or allowed the child to remain, in conditions or surroundings that endangered the child's emotional or physical well-being, and

B. Terminating the parent-child relationship is in the child's best interest.

Answer "Yes" or "No" as to *Parent 1* as to each child.

Child 1 _____

Child 2 _____

Answer "Yes" or "No" as to *Parent 2* as to each child.

Child 1 _____

Child 2 _____

[Ground A and best interest submitted together.]

QUESTION 5

Should the parent-child relationship between *Parent 1 and Parent 2* and those children named below, be terminated on the following ground?

For the parent-child relationship to be terminated in this case, it must be proved by clear and convincing evidence that:

A. The parent voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return, and

B. Terminating the parent-child relationship is in the child's best interest.

Answer "Yes" or "No" as to *Parent 1* as to each child.

Child 1 _____

Child 2 _____

Answer "Yes" or "No" as to *Parent 2* as to each child

Child 1 _____

Child 2 _____

Tab G

EXHIBIT F

(Submission supported by a majority of the subcommittee)
Each ground submitted in a separate question, repeated with all other pled grounds supported by the evidence, with a separate predicated best interest incorporating ultimate termination question.

[Ground D]

QUESTION 1

As to those children named below, do you find by clear and convincing evidence that *Parent 1* or *Parent 2* knowingly placed the child, or allowed the child to remain in, conditions or surroundings that endangered the child's emotional or physical well-being?

Answer "Yes" or "No" as to *Parent 1* as to each child.

Child 1 _____

Child 2 _____

Answer "Yes" or "No" as to *Parent 2* as to each child.

Child 1 _____

Child 2 _____

[Ground A]

QUESTION 2

As to those children named below, do you find by clear and convincing evidence that *Parent 1* or *Parent 2* voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return?

Answer "Yes" or "No" as to *Parent 1* as to each child.

Child 1 _____

Child 2 _____

Answer "Yes" or "No" as to *Parent 2* as to each child.

Child 1 _____

Child 2 _____

If you have answered Question 1 or 2 “Yes” as to any parent or child, then answer Question 3 as to that parent and child. Otherwise, do not answer Question 3.

QUESTION 3

As to those children named below, do you find by clear and convincing evidence that terminating the parent-child relationship is in the child’s best interest and that the parent-child relationship with *Parent 1* or *Parent 2* should be terminated?

Answer “Yes” or “No” as to *Parent 1* as to each child.

Child 1 _____

Child 2 _____

Answer “Yes” or “No” as to *Parent 2* as to each child.

Child 1 _____

Child 2 _____

Tab H

Memorandum

To: Texas Supreme Court Advisory Committee

From: Social Media Subcommittee (TEX. R. CIV. P. 216-299a)
Professor Elaine A. Carlson, Chair
Judge David Peeples
Alistair Dawson
Bobby Meadows
Tom Riney
Kent Sullivan
Kennon Wooten
Justice Tracy Christopher
Justice Bill Boyce

Re: Revised Recommendations re Judicial Use of Social Media

Sept. 22, 2018

In his letter of December 21, 2016, Chief Justice Hecht requested this SCAC Subcommitee to draft amendments to the Code of Judicial Conduct to provide guidance on permissible social media use by judges. The Committee discussed draft proposals at its August 11, 2017 and December 1-2, 2017 meetings. In light of comments and votes made at those meetings, the Subcommittee presents the following new subsection to Canon 4 of the Texas Code of Judicial Conduct and a revised comment regarding the use of social media by members of the judiciary

New Subsection J and New Comment to Canon 4

J. Judicial Use of Social Media

The provisions of this Code governing a judge's communications in person, on paper, and by electronic methods govern a judge's communications on social media.

Social media has become a powerful communication device for persons holding public office, including judges.[1] The provisions of this Code that govern a judge's use of social media, along with the following guidelines, are intended to strike a constitutionally permissible balance between judges' First Amendment rights and the State's interest in safeguarding both the right to a fair trial[2] and public confidence in the integrity and impartiality of the judiciary.[3]

As provided in Canon 4J, the provisions of this Code that govern a judge's communications in person, on paper, and by electronic methods also govern a judge's use of social media. Judges should understand that their communications will likely be scrutinized by others, even when they are not identified as a judge.

Social media differs from traditional in-person and written communications. A statement, photograph, video, or other content can be disseminated to large audiences quickly and easily on social media, sometimes without the consent or knowledge of the person who posted the content (or any person mentioned or depicted in that content). Postings can also invite response and discussion, over which the original poster may have little or no control. Seemingly private remarks can quickly be taken out of context and broadcast in much wider circles than the original poster

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[1] Throughout this comment, the term "social media" refers to "the wide array of Internet-based tools and platforms that increase and enhance the sharing of information," the "common goal [being] to maximize user accessibility and self-publication through a variety of different formats." *See Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees*, Committee on Codes of Conduct, Judicial Conference of the United States, Administrative Office of the United States Courts, April 2010, at 9, available at http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct.

[2] *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) ("Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.").

[3] *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015) ("We have recognized the 'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.'" (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (internal quotation marks omitted)); *see also Republican Party of Minnesota v. White*, 536 U.S. 765, 775–77 (2002) (addressing judicial impartiality—as the lack of bias for or against either party to a proceeding—as a compelling state interest).

intended. Content on social media can lie dormant and then be recirculated long after the original posting. Tone (such as humor) is not always evident in a post.

Social media also creates new and unique relationships, such as "friends[4]" and "followers." Simple designation as a social-media connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person and is not, in and of itself, determinative of whether a judge's impartiality might reasonably be questioned. [Similarly, liking, commenting upon, or sharing others information generally does not, in and of itself, indicate an endorsement[5] of that information.]

Judges should remember that all of their social media postings, even where they are not identified as a judge, could be used in support of a recusal motion or for referral to the State Commission on Judicial Conduct.

Judges should also consider the following:

a. Liking or sharing[6] social media can portray approval of the content.

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[4] This comment was added in 2018. "Friending" someone is the act of sending another user a friend request on Facebook. The two people are Facebook friends once the receiving party accepts the friend request. You can have 5000 friends on Facebook. You automatically follow someone you are a friend with and you can also follow a group or a page that accepts followers. There are currently other social media connections that use different terms. For example LinkedIn allows you to "join" someone's network and have "personal contacts" with other professionals by accepting their computer invitation. You can "follow" someone's Twitter feed without any invitation or permission. Social media platforms and formats are constantly changing. This comment is intended to cover all such types of connections.

[5] *See In re Hecht*, 213 S.W. 3d 547 (Tex. Spec. Ct. Rev. 2006) (An endorsement is more than support or praise).

[6] Facebook has a thumbs up button that you click to like someone's post. Twitter uses a small heart button that you can click to "show appreciation" for a tweet. You share a post to your computer friends or followers when you click a share button. The post you share is then available for your own friends or followers to view.

b. Posting frequently (either favorably or negatively) about a place of business, a person, or a product, could be used in support of a recusal motion to show bias or a relationship with that business, person, or product.

c. It is also easier for people to attempt to engage in ex parte communications[7] with a judge via social media. Any known attempt at an ex parte communication should be disclosed to all parties and should be discouraged.[8]

d. Most social media posts can be commented upon. Judges should consider whether a particular post might draw unwanted or inappropriate comments about a pending case that could reflect on the impartiality or integrity of the court.

e. Consider not joining private groups where lawyers comment on pending cases, because this could lead to ex parte communications.

[7] As defined in Canon 3B(8).

[8] *Youkers v. State*, 400 S.W.3d 200, 205 (Tex. App.—Dallas 2013, no pet.)

Tab I

Memorandum

To: Supreme Court Advisory Committee

From: Tracy Christopher

Date: July 11, 2018

Re: Judicial Use of Social Media

I am sorry that I will be unable to attend the meeting on July 13 to discuss this rule and comment. The Supreme Court already has my comments from the last meeting about the current draft comment. Unfortunately, the subcommittee was unable to meet again to discuss any further drafts and does not have a new draft for the committee to consider. I have no objections to adding new subsection J to Cannon 4. My objections are to the comments.

To the extent that the Supreme Court wishes to add comments to the new rule, I suggest comments along the lines of the following:

Points about social media:

It goes to a much broader audience and lasts forever.

It can be more easily misunderstood, unlike comments made in person. Tone (such as humor) is not always evident in a post.

Remember 3B(10) for your own posts.

Liking or sharing a social media post can portray approval of that post.

Watch out for potential ex parte situations under 3B(8) because it is much easier for someone to attempt to engage in ex parte communications via social media. Any known attempt at an ex parte communication should be disclosed to all parties and should be discouraged.

Be careful with even a neutral discussion of a pending case—such as—"I am in a jury trial in the case of the State v John Doe, who is accused of murder" because non-parties

can make unwanted comments such as “hang ‘em high, judge” to your post. A better practice would be to wait until a case has concluded to make such a neutral comment.

Do not join special groups via social media where lawyers comment on pending cases, because they may inadvertently engage in an ex parte communication with you.

Tab J

From the CODE OF JUDICIAL CONDUCT

Pre-2002 Canon 5:

Canon 5. Refraining From Inappropriate Political Activity

(1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case.

(2) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office, but may state a position regarding the conduct of administrative duties;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

(3) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(4) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(5) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

Amended by orders of June 30, 1993, and Nov. 4, 1993, eff. March 1, 1994; order of Sept. 21, 1994, eff. Jan. 1, 1995; order of March 1, 1996; order of Oct. 30, 1997, eff. Jan. 1, 1999; order of June 21, 1999, eff. July 1, 1999.

Current Canon 5:

Canon 5. Refraining From Inappropriate Political Activity

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

Amended by orders of June 30, 1993, and Nov. 4, 1993, eff. March 1, 1994; order of Sept. 21, 1994, eff. Jan. 1, 1995; order of March 1, 1996; order of Oct. 30, 1997, eff. Jan. 1, 1999; order of June 21, 1999, eff. July 1, 1999; order of Aug. 22, 2002.

CODE OF JUDICIAL CONDUCT, CANON 3-B (10) [current]

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

Tab K

79 Tex. B.J. 100

Texas Bar Journal
February, 2016

Feature
The Judiciary

RULES OF ENGAGEMENT
Exploring Judicial Use of Social Media

John G. Browning[a1] Don Willett[a2]

We live in a wired world where Twitter processes more than one billion tweets every 48 hours. Harnessing technology has helped courts be more transparent than ever; witness, for example, the Texas Supreme Court's webcasting and archiving of oral arguments, providing free online access to court records, and, of course, enabling Texans to file documents electronically. Judges continue to use social networking in their personal and professional lives to greater extents than before, as they seek to not only stay connected to the community they serve but also to reap the practical benefits of raising funds and voter awareness in judicial elections.

Yet, not surprisingly, more judges using such platforms often translates to more judges using social media badly, despite the guidance available from judicial ethics opinions in 15 states, a 2013 American Bar Association formal ethics opinion that green-lighted judicial use of social media, and, for federal judges, Opinion 112 issued in 2014 by the Judicial Conference of the United States Committee on Codes of Conduct. For some jurists, the problems arise in the context of election campaigns, such as when District Judge Jan Satterfield of Kansas liked the Facebook page of a candidate for sheriff, which was viewed by the Kansas Commission on Judicial Qualifications as an impermissible endorsement.[1] For others, the problem is the unfortunate overlap between personal lives and professional personas, such as the resignation of Dianna Bennington, a former city court judge in Indiana whose personal Facebook posts during an acrimonious child support dispute with her children's father led to a finding of "injudicious behavior."[2]

Other judges have courted criticism and faced recusal motions and disciplinary actions for using social media sites in their judicial capacities. For example, in July 2015, Galveston County District Court Judge Michelle Slaughter faced a trial before a special court of review after appealing a public admonition from the State Commission on Judicial Conduct. The charges centered on Facebook posts she had made referencing cases pending in her court, including a criminal trial dubbed the "boy in the box" case by local media. The commission claimed that Slaughter's posts were inconsistent with her duties as a judge, cast doubt on her impartiality, and undermined public confidence in the judiciary. She maintained that her brief, factual statements (such as the post that a "big criminal trial" was starting) did not comment on the evidence or witnesses and did not indicate any learning toward one side or the other. Moreover, she argued that her Facebook posts were simply part of her fulfillment of a campaign promise to be transparent and to keep the public informed about the cases being tried in her court.

In a per curiam opinion issued September 30, 2015, the Special Court of Review of Texas dismissed the public admonition and found Slaughter not guilty of all charges.[3] Noting social media's "transformative effect on society" as well as the fact that "no rule, canon of ethics, or judicial ***101** ethics opinion in Texas prohibits Texas judges from using social media outlets like Facebook," the court found no evidence that Slaughter's online comments "would suggest to a reasonable person the judge's probable decision on any particular case or that would cause reasonable doubt on the judge's capacity to act impartially as a judge."[4] The court also rejected the notion that her postings or the fact that she was recused from the underlying case amounted to any misuse of her office or a violation of the Canons of the Code of Judicial Conduct, although it did caution that "comments made by judges about pending proceedings" may "detract from the public trust and confidence in the administration of justice."[5]

Recent episodes involving judges who went beyond innocuous factual statements illustrate the validity of the Texas Court of Special Review's concerns. In November 2015, Senior Judge Edward Bearse was publicly reprimanded by the Minnesota Board on Judicial Standards for his Facebook posts about cases he was presiding over--including one that resulted in a vacated verdict.[6] Bearse (who had served on the bench for 32 years, retired in 2006, and was sitting statewide by appointment) referred to Hennepin County District Court in one post as "a zoo."[7] In another, he reflected on a case in which the defense counsel had to be taken away by an ambulance mid-trial, likely to result "in chaos because defendant has to hire a new lawyer who will most likely want to start over and a very vulnerable woman will have to spend another day on the witness stand. ..."[8] During *State v. Weaver*, a sex trafficking trial, Bearse posted the following:

> Some things I guess will never change. I just love doing the stress of jury trials. In a Felony trial now State prosecuting a pimp. Cases are always difficult because the women (as in this case also) will not cooperate. We will see what the 12 citizens in the jury box do.[9]

After a guilty verdict, the prosecutor discovered Bearse's Facebook post and disclosed it to the defense, who successfully moved for a new trial because of the prejudgment implied by the post. Bearse explained that he was new to Facebook, was unaware of privacy settings, and didn't realize his posts were publicly viewable. The board concluded that he had put his "personal communication preferences above his judicial responsibilities," given at least the appearance of a lack of impartiality, and had engaged in "conduct prejudicial to the administration of justice that brings the judicial office into disrepute."[10]

In Kentucky, Circuit Court Judge Olu Stevens ignited a firestorm of controversy with his Facebook posts. Early in 2015, Stevens went on Facebook to vent his frustration with a victim impact statement made by the mother of a white child who had witnessed a home invasion by two black men and was supposedly "in constant fear of black men." In his post, Stevens--who is African-American--condemned the statements and accused the mother of attributing "her own views to her child as a manner of sanitizing them."[11] And after he dismissed a nearly all-white jury panel--upon request from the public defender--in a case with an African-American defendant, Stevens posted about it on Facebook, prompting prosecutors to seek his recusal from all pending criminal cases. The situation reached the Kentucky Supreme Court, with Stevens's posts also denouncing Commonwealth's Attorney Thomas Wine for alleged racism and including the comment, "Going to the Kentucky Supreme Court to protect the right to impanel alt-white juries is not where we need to be in 2015. Do not sit silently. Stand up. Speak up."[12] Wine demanded Stevens's disqualification due to the "inflammatory" Facebook posts.[13]

Kentucky Supreme Court Chief Justice John D. Minton Jr. ordered the parties to mediate their differences. And although an agreement was reached in December, just days later Wine claimed that Stevens had violated the accord with yet another Facebook post in which he asserted that his critics' goal was "taking my position in order to silence me."[14]

Venturing onto Twitter can also be problematic for judges who neglect to diligently self-censor. The 9th Circuit is currently weighing a challenge to a ruling by U.S. District Court Judge William B. Shubb in the case of *U.S. v. Sierra Pacific Industries*.[15] The case arose out of a 2007 wildfire that devastated nearly 65,000 acres in California. The federal government, which blamed lumber producer Sierra Pacific, reached a settlement that the lumber company sought to vacate. Shubb denied Sierra Pacific's motion. In its appeal, the company pointed out that not only was Shubb a Twitter follower of the federal prosecutors on the case--and had purportedly received tweets about the merits of the case from the Eastern District of California's Twitter handle (@EDCAnews)--but also that he himself had tweeted about the case from his then-public Twitter account (@Nostalgist1). Shubb allegedly tweeted, "Sierra Pacific still liable for Moonlight Fire damages," and also linked to a news article about the case--all while the case was still pending.[16] As Sierra Pacific's lawyers pointed out, the tweet was inaccurate (no finding of liability was ever made) and it also increased the appearance of bias and "prejudices Sierra Pacific and all Defendants in the pending state court appeal regarding the Moonlight Fire."[17]

With judges elected in 39 states (including Texas), social media is a fruitful way to engage with the community as well as an invaluable means of raising visibility, building awareness, and leveraging the support of key influencers and opinion leaders. Texas--along with many courts and judicial ethics authorities across the country--has rejected the notion that a person's mere status as a Facebook "friend" or other social networking connection with a judge is enough to convey the appearance of a special relationship or position of influence with that judge.[18]

However, judges need to be mindful of the power, specific features, and limitations of sites like Facebook and Twitter. "Judge" need not be synonymous with humorless fuddy-duddy, but certain cardinal rules must be followed. Chief among

these is that the ethical restrictions applicable to every other means of communication are just as applicable ***102** to social media. For example, judges shouldn't discuss pending cases--period. And before posting, tweeting, or responding to what someone else has posted or tweeted, judges need to ask themselves whether their statement could be seen as inappropriate or conveying partiality or bias. Judges are free to use social media, a terrific, low-cost way to remove distance and demystify the judiciary. But they must exercise caution, taking care to honor the distinctive constitutional role they've taken on as well as the public's confidence in the judiciary. Whether they're crafting a 140-page opinion or a 140-character tweet, judges must always be judicious.

Footnotes

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1 *Kansas judge Causes* Stir *With Facebook 'Like*,' Real Cleat Politics (July 29, 2012), http://www.reatelearpolitics.com/news/ap/politics/2012/Jul/29/kansas_judge_causes_stir_with_facebook_like_html.

2 *In re the Honorable Dianna L. Bennington*, No. 18S00-1412-JD-733, (Ind. Feb. 10, 2015), http://caselaw.findlaw.com/in-supreme-court/1691967.html.

3 *In re Honorable Michelle Slaughter, Presiding Judge of the 405th Judicial District Court, Galveston County, Texas*, Docket No. 15-0001 (Special Court of Review of Texas, Sept. 30, 2015).

4 *Id.* (Citing John G. Browning, "Social Media and the Law: Symposium Keynote Address," 68 U Miami L. Rev. 353, 359 (2014).)

5 *Id.*

6 In the Matter of Senior Judge Edward W. Bearse, Amended Public Reprimand (Minnesota Board on judicial Standards, File No. 15-7, Nov, 20, 2015).

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 Andrew Wolfson, *Judge Slams Victims for Tot's 'Black Men' Fear*, Courier-Journal (April 15, 2015), http://www.courier-journal.com/story/news/local/2015/04/10/judge-slams-victimstots-black-men-fear/25581605/.

[12] Jacob Gershman, *Prosecutors Want Judge Off Criminal Casts Because of Facebook Posts*, Wall Street Journal Law Blog (Nov. 18, 2015), http://blogs.wsj.com/law/2015/11/18/prosecutors-want-judge-off-criminal-cases-because-of-facebook-posts/.

[13] Matthew Glowicki, *Judge Kicked Off Cases Over Online Comments*, Courier-Journal (Nov. 19, 2015), http://www.courier-journal.com/story/news/local/20**l**5/11/18/prosecutorwants-judge-off-cases-over-raciai-stand/75957606/.

[14] Matthew Glowicki and Andrew Wolfson, *Wine Renews Call to Take Olu Stevens Off Cases*, Courier-Journal (Dec. 14, 2015), http://www.courier-journal.com/story/news/crime/2015/12/14/prosecutors-say-judge-broke-mediation-agreement/77290214/.

[15] David Lat, *A Federal Judge and His Twitter Account: A Cautionary Tale*, Above the Law (Nov. 18, 2015). www.abovethelaw.com/2015/u/a-federal-judge-and-his-twitter-accounta-cautionary-tale/.

[16] *U.S. v. Sierra Pacific Industries, et al*, No. 15-15799, Appellants' Motion for Judicial Notice (9th Cir. Nov, 6, 2015).

[17] *Id.*

[18] *See Youkers v. State*, 400 S.W.3d 200 (Tex. App.--Dallas [5th Dist.] 2013).

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Tab L

AMERICAN BAR ASSOCIATION

Formal Opinion 462 **February 21, 2013**
Judge's Use of Electronic Social Networking Media

A judge may participate in electronic social networking, but as with all social relationships and contacts, a judge must comply with relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create an appearance of impropriety.[1]

In this opinion, the Committee discusses a judge's participation in electronic social networking. The Committee will use the term "electronic social media" ("ESM") to refer to internet-based electronic social networking sites that require an individual to affirmatively join and accept or reject connection with particular persons. [2]

Judges and Electronic Social Media

In recent years, new and relatively easy-to-use technology and software have been introduced that allow users to share information about themselves and to post information on others' social networking sites. Such technology, which has become an everyday part of worldwide culture, is frequently updated, and different forms undoubtedly will emerge.

Social interactions of all kinds, including ESM, can be beneficial to judges to prevent them from being thought of as isolated or out of touch. This opinion examines to what extent a judge's participation in ESM raises concerns under the Model Code of Judicial Conduct.

Upon assuming the bench, judges accept a duty to "respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." [3] Although judges are full-fledged members of their communities, nevertheless, they "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens…." [4] All of a judge's social contacts, however made and in whatever context, including ESM, are governed by the requirement that judges must at all times act in a manner "that promotes public confidence in the independence, integrity, and impartiality of the judiciary," and must "avoid impropriety and the appearance of impropriety." [5] This requires that the judge be sensitive to the appearance of relationships with others.

The Model Code requires judges to "maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives." [6] Thus judges must be very thoughtful in their interactions with others, particularly when using ESM. Judges must assume that comments posted to an ESM site will not remain within the circle of the judge's connections. Comments, images, or profile information, some of which might prove embarrassing if publicly revealed, may be electronically transmitted without the judge's knowledge or permission to persons unknown to the judge or to other unintended recipients. Such dissemination has the potential to compromise or appear to

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[1] This opinion is based on the ABA Model Code of Judicial Conduct as amended by the ABA House of Delegates through August 2012. The laws, court rules, regulations, rules of professional and judicial conduct, and opinions promulgated in individual jurisdictions are controlling.

[2] This opinion does not address other activities such as blogging, participation on discussion boards or listserves, and interactive gaming.

[3] Model Code, Preamble [1].

[4] Model Code Rule 1.2 cmt. 2.

[5] Model Code Rule 1.2. *But see* Dahlia Lithwick and Graham Vyse, "Tweet Justice," SLATE (April 30, 2010), (describing how state judge circumvents ethical rules prohibiting ex parte communications between judges and lawyers by asking lawyers to "de-friend" her from their ESM page when they're trying cases before her; judge also used her ESM account to monitor status updates by lawyers who appeared before her), *article available at* http://www.slate.com/articles/news_and_politics/jurisprudence/2010/04/tweet_justice.html.

[6] Model Code, Preamble [2].

compromise the independence, integrity, and impartiality of the judge, as well as to undermine public confidence in the judiciary.[7]

There are obvious differences between in-person and digital social interactions. In contrast to fluid, face-to-face conversation that usually remains among the participants, messages, videos, or photographs posted to ESM may be disseminated to thousands of people without the consent or knowledge of the original poster. Such data have long, perhaps permanent, digital lives such that statements may be recovered, circulated or printed years after being sent. In addition, relations over the internet may be more difficult to manage because, devoid of in-person visual or vocal cues, messages may be taken out of context, misinterpreted, or relayed incorrectly.[8]

A judge who participates in ESM should be mindful of relevant provisions of the Model Code. For example, while sharing comments, photographs, and other information, a judge must keep in mind the requirements of Rule 1.2 that call upon the judge to act in a manner that promotes public confidence in the judiciary, as previously discussed. The judge should not form relationships with persons or organizations that may violate Rule 2.4(C) by conveying an impression that these persons or organizations are in a position to influence the judge. A judge must also take care to avoid comments and interactions that may be interpreted as *ex parte* communications concerning pending or impending matters in violation of Rule 2.9(A), and avoid using any ESM site to obtain information regarding a matter before the judge in violation of Rule 2.9(C). Indeed, a judge should avoid comment about a pending or impending matter in any court to comply with Rule 2.10, and take care not to offer legal advice in violation of Rule 3.10.

There also may be disclosure or disqualification concerns regarding judges participating on ESM sites used by lawyers and others who may appear before the judge.[9] These concerns have been addressed in judicial ethics advisory opinions in a number of states. The drafting committees have expressed a wide range of views as to whether a judge may "friend" lawyers and others who may appear before the judge, ranging from outright prohibition to permission with appropriate cautions.[10] A judge who has an ESM connection with a lawyer or party who has a pending or impending matter before the court must evaluate that ESM connection to determine whether the judge should disclose the relationship prior to, or at the initial appearance of the person before the court.[11] In this regard, context is significant.[12] Simple

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[7] *See* Model Code Rule 1.2 cmt. 3. *Cf.* New York Jud. Eth. Adv. Op. 08-176 (2009) (judge who uses ESM should exercise appropriate degree of discretion in how to use the social network and should stay abreast of features and new developments that may impact judicial duties). Regarding new ESM website developments, it should be noted that if judges do not log onto their ESM sites on a somewhat regular basis, they are at risk of not knowing the latest update in privacy settings or terms of service that affect how their personal information is shared. They can eliminate this risk by deactivating their accounts.

[8] Jeffrey Rosen, "The Web Means the End of Forgetting", N.Y. TIMES MAGAZINE (July 21, 2010) *accessible at* http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?pagewanted=all.

[9] *See, e.g.,* California Judges Ass'n Judicial Ethics Comm. Op. 66 (2010) (judges may not include in social network lawyers who have case pending before judge); Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2009-20 (2009) (judge may not include lawyers who may appear before judge in social network or permit such lawyers to add judge to their social network circle); Ethics Committee of the Ky. Jud. Formal Jud. Eth. Op. JE-119 (judges should be mindful of "whether on-line connections alone or in combination with other facts rise to the level of 'a close social relationship'" that should be disclosed and/or require recusal); Ohio Sup. Ct. Bd. of Comm'rs on Grievances and Discipline Op. 2010-7 (2010) (judge may have ESM relationship with lawyer who appears as counsel in case before judge as long as relationship comports with ethics rules); South Carolina Jud. Dep't Advisory Comm. on Standards of Jud. Conduct, Op. No. 17-2009 (magistrate judge may have ESM relationship with lawyers as long as they do not discuss anything related to judge's judicial position). *See also* John Schwartz, "For Judges on Facebook, Friendship Has Limits," N.Y. TIMES, Dec. 11, 2009, at A25. *Cf.* Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-04 (2010) (judge's judicial assistant may add lawyers who may appear before judge to social networking site as long as the activity is conducted entirely independent of judge and without reference to judge or judge's office).

[10] *See* discussion in Geyh, Alfini, Lubet and Shaman, JUDICIAL CONDUCT AND ETHICS (5th Edition, forthcoming), Section 10.05E.

[11] California Judges Assn. Judicial Ethics Comm. Op. 66 (need for disclosure arises from peculiar nature of online social networking sites, where evidence of connection between lawyer and judge is widespread but nature of connection may not be readily apparent). *See also* New York Jud. Eth. Adv. Op. 08-176 (judge must consider whether any online connections, alone or in combination with other facts, rise to level of close social relationship requiring disclosure and/or recusal); Ohio Opinion 2010-7 (same).

[12] Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-06 (2010) (judge who is member of voluntary bar association not required to drop lawyers who are also members of that organization from organization's ESM site; members use the site to communicate among themselves about organization and other non-legal matters). *See also* Raymond McKoski,

designation as an ESM connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person. [13]

Because of the open and casual nature of ESM communication, a judge will seldom have an affirmative duty to disclose an ESM connection. If that connection includes current and frequent communication, the judge must very carefully consider whether that connection must be disclosed. When a judge knows that a party, a witness, or a lawyer appearing before the judge has an ESM connection with the judge, the judge must be mindful that such connection may give rise to the level of social relationship or the perception of a relationship that requires disclosure or recusal. [14] The judge must remember that personal bias or prejudice concerning a party or lawyer is the sole basis for disqualification under Rule 2.11 that is not waivable by parties in a dispute being adjudicated by that judge. The judge should conduct the same analysis that must be made whenever matters before the court involve persons the judge knows or has a connection with professionally or personally. [15] A judge should disclose on the record information the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification even if the judge believes there is no basis for the disqualification. [16] For example, a judge may decide to disclose that the judge and a party, a party's lawyer or a witness have an ESM connection, but that the judge believes the connection has not resulted in a relationship requiring disqualification. However, nothing requires a judge to search all of the judge's ESM connections if a judge does not have specific knowledge of an ESM connection that rises to the level of an actual or perceived problematic relationship with any individual.

Judges' Use of Electronic Social Media in Election Campaigns

Canon 4 of the Model Code permits a judge or judicial candidate to, with certain enumerated exceptions, engage in political or campaign activity. Comment [1] to Rule 4.1 states that, although the Rule imposes "narrowly tailored restrictions" on judges' political activities, "to the greatest extent possible," judges and judicial candidates must "be free and appear to be free from political influence and political pressure."

Rule 4.1(A)(8) prohibits a judge from personally soliciting or accepting campaign contributions other than through a campaign committee authorized by Rule 4.4. The Code does not address or restrict a judge's or campaign committee's method of communication. In jurisdictions where judges are elected, ESM has become a campaign tool to raise campaign funds and to provide information about the candidate.[17] Websites and ESM promoting the candidacy of a judge or judicial candidate may be

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"Reestablishing Actual Impartiality as the Fundamental Value of Judicial Ethics: Lessons from 'Big Judge Davis'," 99 KY. L.J. 259, 291 (2010-11) (nineteenth century judge universally recognized as impartial despite off-bench alliances, especially with Abraham Lincoln); Schwartz, *supra* note 9 ("Judges do not drop out of society when they become judges…. The people who were their friends before they went on the bench remained their friends, and many of them were lawyers.") (quoting New York University Prof. Stephen Gillers).

[13] *See* Ethics Committee of the Ky. Jud. Formal Jud. Eth. Op. JE-119 (2010) (designation as an ESM follower does not, in and of itself, indicate the degree or intensity of judge's relationship with the person).

[14] *See, e.g.*, New York Judicial Ethics Advisory Opinion 08-176, *supra* n. 8. *See also* Ashby Jones, "Why You Shouldn't Take It Hard If a Judge Rejects Your Friend Request," WALL ST. J. LAW BLOG (Dec. 9, 2009) ("'friending' may be more than say an exchange of business cards but it is well short of any true friendship"); Jennifer Ellis, "Should Judges Recuse Themselves Because of a Facebook Friendship?" (Nov. 2011) (state attorney general requested that judge reverse decision to suppress evidence and recuse himself because he and defendant were ESM, but not actual, friends), *available at* http://www.jlellis.net/blog/should-judges-recuse-themselves-because-of-a-facebook-friendship/.

[15] *See* Jeremy M. Miller, "Judicial Recusal and Disqualification: The Need for a Per Se Rule on Friendship (Not Acquaintance)," 33 PEPPERDINE L. REV. 575, 578 (2012) ("Judges should not, and are not, expected to live isolated lives separate from all potential lawyers and litigants who may appear before them.... However, it is also axiomatic that justice, to be justice, must have the appearance of justice, and it appears unjust when the opposing side shares an intimate (but not necessarily sexual) relationship with the judge").

[16] Rule 2.11 cmt. 5.

[17] In a recent survey, for judges who stood for political election, 60.3% used social media sites. 2012 CCPIO New Media and Courts Survey: A Report of the New Media Committee of the Conference of Court Public Information Officers (July 31, 2012), *available at* http://ccpio.org/blog/2010/08/26/judges-and-courts-on-social-media-report-released-on-new-medias-impact-on-the-judiciary/.

established and maintained by campaign committees to obtain public statements of support for the judge's campaign so long as these sites are not started or maintained by the judge or judicial candidate personally.[18]

Sitting judges and judicial candidates are expressly prohibited from "publicly endorsing or opposing a candidate for any public office."[19] Some ESM sites allow users to indicate approval by applying "like" labels to shared messages, photos, and other content. Judges should be aware that clicking such buttons on others' political campaign ESM sites could be perceived as a violation of judicial ethics rules that prohibit judges from publicly endorsing or opposing another candidate for any public office. [20] On the other hand, it is unlikely to raise an ethics issue for a judge if someone "likes" or becomes a "fan" of the judge through the judge's ESM political campaign site if the campaign is not required to accept or reject a request in order for a name to appear on the campaign's page.

Judges may privately express their views on judicial or other candidates for political office, but must take appropriate steps to ensure that their views do not become public. [21] This may require managing privacy settings on ESM sites by restricting the circle of those having access to the judge's ESM page, limiting the ability of some connections to see others, limiting who can see the contact list, or blocking a connection altogether.

Conclusion

Judicious use of ESM can benefit judges in both their personal and professional lives. As their use of this technology increases, judges can take advantage of its utility and potential as a valuable tool for public outreach. When used with proper care, judges' use of ESM does not necessarily compromise their duties under the Model Code any more than use of traditional and less public forms of social connection such as U.S. Mail, telephone, email or texting.

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[18] Florida Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-28 (July 23, 2010).
[19] Model Code Rule 4.1(A)(3).
[20] *See* "Kansas judge causes stir with Facebook `like'," The Associated Press, July 29, 2012, *available at* http://www.realclearpolitics.com/news/ap/politics/2012/Jul/29/kansas_judge_causes_stir_with_facebook__like_.html.
[21] *See* Nevada Comm'n on Jud. Disc. Op. JE98-006 (Oct. 20, 1998) ("In expressing his or her views about other candidates for judicial or other public office in letters or other recorded forms of communication, the judge should exercise reasonable caution and restraint to ensure that his private endorsement is not, in fact, used as a public endorsement.").

Tab M

POLITICAL ACTIVITY Opinion No. 2 (1975)

QUESTION: May a Texas judge privately introduce candidates for judicial office to his friends and recommend that such friends vote for such candidates?

ANSWER: It is the opinion of the Committee on Judicial Ethics that a Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for judicial office to his friends and recommending that such friends vote for such candidates.

POLITICAL ACTIVITIES Opinion No. 13 (1976)

QUESTION: May a district judge introduce a candidate for the state Legislature to his personal friends and recommend that such friends vote for such candidate?

ANSWER: The Committee on Judicial Ethics is of the opinion that the question should be answered in the affirmative. In Opinion Number 2 this Committee held that a Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for judicial office to his friends and recommending that such friends vote for such candidates. The Committee now reaffirms that opinion and extends its scope so that henceforth it will be applicable to all candidates for public office.

ENDORSEMENT OF POLITICAL CANDIDATES Opinion No. 130 (1989)

QUESTION: A judge brings to the attention of this Committee the Texas Attorney General's March 10, 1989 Opinion LO-89-21 which states that Canons 2 and 7 do not prohibit a judge from endorsing a candidate, and the judge submits this question: May a judge endorse a candidate for public office?

ANSWER: No. The Judicial Ethics Committee concludes again that a judge's public endorsement of a candidate for public office violates the Code of Judicial Conduct because such an endorsement tends to diminish public confidence in the independence and impartiality of the judiciary and may give the appearance of involvement in partisan interests and of judicial concern about public clamor or criticism, and because such an endorsement of necessity involves the use of the prestige of the judge and the prestige of his office. See Canons 1, 2A, 2B, and 3A(1), and Judicial Ethics Committee Opinions No. 73, 92, and 100. The Committee has considered the Attorney General's Opinion and the provisions of the amended Code adopted in 1987, and the Committee is not persuaded by the Attorney General's conclusion that, in the Canon 2B provision that a judge should not lend the prestige of office to advance the private interests of others, the words

"private interests" do not include candidacy. The committee reaffirms its Opinion No. 73, and, by a unanimous vote, respectfully recommends that the Supreme Court of Texas amend Canon 7* of the Texas Code of Judicial Conduct by adding to Canon 7* the following provisions from proposed Canon 5A of the May 1, 1989 Draft Revisions to the American Bar Association Code of Judicial Conduct: "A judge or a candidate for election or appointment to judicial office shall not make speeches for a political organization or candidate or publicly endorse a candidate for public office." [Proposed ABA Canon 5A(1)(b)]"A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his or her own behalf when a candidate for election, identify himself or herself as a member of a political party, and contribute to a political party or organization." [Proposed ABA Canon 5A(3)] _____

*Now see Canon 5.

CAMPAIGN BUMPER STICKERS ON JUDGES' VEHICLES Opinion No. 136 (1990)

QUESTION: May a judge display on the judge's vehicle a bumper sticker supporting a political candidate?

ANSWER: No. For the reasons stated in Opinion No. 130 a judge's public endorsement of a candidate for public office violates the Code of Judicial Conduct. After Opinion 130 was issued, the Texas Supreme Court amended Canon 7(3)* so that it now expressly prohibits the public use of a judge's name endorsing another candidate. The Committee concludes that a judge displaying such a bumper sticker would also violate at least the spirit of this new Canon 7(3)* provision, because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. See Opinion No. 73.

CAMPAIGNING FOR OTHER CANDIDATES Opinion No. 170 (1994)

QUESTIONS: 1. May a judge of a district, county or J.P. court running for reelection or candidate for any such office hand out campaign material for candidates of one's own political party along with one's material and recommend to people that they vote for these candidates?

2. May a judge of a district, county, or J.P. court running for reelection or candidate for any such office hand out campaign material for candidates of one's own political party along with one's material without making any endorsement but with the request that the voters consider these other candidates?

3. May a judge of a district, county, or J.P. court running for reelection or candidate for any such office hand out a campaign piece produced and paid for by one's own political party that contains an advertisement for such judge along with advertisements for the other candidates?

4. For any of the activities described above which are determined to violate the new code, would it be permissible for one's spouse to engage in such action?

ANSWERS: It is the opinion of the Committee that the first three questions are prohibited by Canon 5(3) of the Code of Judicial Conduct which provides in the first sentence, "A judge or judicial candidate shall not authorize the public use of his own name endorsing another candidate for public office except that either may indicate support for a political party."

Public activity by handing out campaign material for another candidate by a judge or candidate for judge as set out in Questions 1 through 3 would be a public endorsement. Articulating a "recommendation" as set out in Question 1 or by asking "consideration" as set out in Question 2 would merely be another form of public endorsement.

Question 3, although it does not involve articulating support for another, still involves an overt act of personally handing out campaign material for another candidate and would be a public endorsement. Opinion No. 100 concluded that joint campaign activity by two judge candidates would violate the Canon 2 prohibition against lending the prestige of judicial office to advance the "private interests" include candidacy. See also Opinions No. 73, 92, 136, and 145.

Question 4 involves the conduct of a spouse of a judge. The Code does not attempt to regulate the activities of a judge's spouse so this conduct would not be prohibited.

Tab N

History of the endorsement provision:
From *In re Hecht*, 213 S.W. 3d 547, 560-561 (Tex. Spec. Ct. Rev. 2006)

Until 1974, there was no Code of Judicial Conduct in Texas. In 1974, the Texas Supreme Court enacted the initial Code of Judicial Conduct, which contained an "endorsement" prohibition:
A judge or candidate for election to judicial office should not: ... (b) make political speeches for a political organization or candidate or publicly *endorse* a candidate for public office.

Tex.Code Jud. Conduct, Canon 7A(1)(b), 37 Tex. B.J. 853 (1974).

In 1976, the Texas Supreme Court removed the endorsement prohibition from the Code.[17] In 1980, the Committee on Judicial Ethics[18] issued an opinion in answer to the question: "May a judge endorse a specific candidate or candidates?" *561 The opinion stated the Code did not "specifically prohibit a judge from supporting a candidate or candidates." After reviewing the provisions of Canon 2, the opinion concluded:

> The Committee is of the opinion that endorsing a candidate or candidates is within the discretion of a judge provided the nature and type of endorsement does not contravene Canon 1, Canon 2A and Canon 2B of the Code of Judicial Conduct.

Comm. on Jud. Ethics, State Bar of Tex., Op. 53A (1980).

In 1990, the Texas Supreme Court amended Canon 7(3) as follows:
A judge or judicial candidate shall not *authorize* the public use of his or her name endorsing another candidate for any public office, except that a candidate may indicate support for a political party.

Tex.Code Jud. Conduct, Canon 7(3), 53 Tex. B.J. 240–41 (1990) (emphasis added).[19] Today, this provision (hereafter, "authorization" provision) is found in Canon 5(2) and provides in pertinent part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party."
Tex.Code Jud. Conduct, Canon 5(2).

Tab O

COMMENT

Social media has become a powerful communication device for persons holding public office, including judges.[1] The provisions of this Code that govern a judge's use of social media, along with the following guidelines, are intended to strike a constitutionally permissible balance between judges' First Amendment rights and the State's interest in safeguarding both the right to a fair trial[2] and public confidence in the integrity and impartiality of the judiciary.[3]

As provided in Canon 4J, the provisions of this Code that govern a judge's communications in person, on paper, and by electronic methods also govern a judge's use of social media. Judges should understand that their communications will likely be scrutinized by others, even when they are not identified as a judge.

Social media differs from traditional in-person and written communications. A statement, photograph, video, or other content can be disseminated to large audiences quickly and easily on social media, sometimes without the consent or knowledge of the person who posted the content (or any person mentioned or depicted in that content). Postings can also invite response and discussion, over which the original poster may have little or no control. Seemingly private remarks can quickly be taken out of context and broadcast in much wider circles than the original poster intended. Content on social media can lie dormant and then be recirculated long after the original posting. Tone (such as humor) is not always evident in a post.

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[1] Throughout this comment, the term "social media" refers to "the wide array of Internet-based tools and platforms that increase and enhance the sharing of information," the "common goal [being] to maximize user accessibility and self-publication through a variety of different formats." *See Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees*, Committee on Codes of Conduct, Judicial Conference of the United States, Administrative Office of the United States Courts, April 2010, at 9, available at http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct.

[2] *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991) ("Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.").

[3] *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015) ("We have recognized the 'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.'" (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (internal quotation marks omitted)); *see also Republican Party of Minnesota v. White*, 536 U.S. 765, 775–77 (2002) (addressing judicial impartiality—as the lack of bias for or against either party to a proceeding—as a compelling state interest).

Social media also creates new and unique relationships, such as "friends[4]" and "followers." Simple designation as a social-media connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person and is not, in and of itself, determinative of whether a judge's impartiality might reasonably be questioned. [Similarly, liking, commenting upon, or sharing others information generally does not, in and of itself, indicate an endorsement[5] of that information.]

Judges should remember that all of their social media postings, even where they are not identified as a judge, could be used in support of a recusal motion or for referral to the State Commission on Judicial Conduct.

Judges should also consider the following:

a. Liking or sharing[6] social media can portray approval of the content.

b. Posting frequently (either favorably or negatively) about a place of business, a person, or a product, could be used in support of a recusal motion to show bias or a relationship with that business, person, or product.

c. It is also easier for people to attempt to engage in ex parte communications[7] with a judge via social media. Any known attempt at an ex parte communication should be disclosed to all parties and should be discouraged.[8]

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[4] This comment was added in 2018. "Friending" someone is the act of sending another user a friend request on Facebook. The two people are Facebook friends once the receiving party accepts the friend request. You can have 5000 friends on Facebook. You automatically follow someone you are a friend with and you can also follow a group or a page that accepts followers. There are currently other social media connections that use different terms. For example LinkedIn allows you to "join" someone's network and have "personal contacts" with other professionals by accepting their computer invitation. You can "follow" someone's Twitter feed without any invitation or permission. Social media platforms and formats are constantly changing. This comment is intended to cover all such types of connections.

[5] *See In re Hecht*, 213 S.W. 3d 547 (Tex. Spec. Ct. Rev. 2006) (An endorsement is more than support or praise).

[6] Facebook has a thumbs up button that you click to like someone's post. Twitter uses a small heart button that you can click to "show appreciation" for a tweet. You share a post to your computer friends or followers when you click a share button. The post you share is then available for your own friends or followers to view.

[7] As defined in Canon 3B(8).

[8] *Youkers v. State*, 400 S.W.3d 200, 205 (Tex. App.—Dallas 2013, no pet.)

d. Most social media posts can be commented upon. Judges should consider whether a particular post might draw unwanted or inappropriate comments about a pending case that could reflect on the impartiality or integrity of the court.

e. Consider not joining private groups where lawyers comment on pending cases, because this could lead to ex parte communications.

Tab P

Memorandum

To: Texas Supreme Court Advisory Committee

From: Social Media Subcommittee (TEX. R. CIV. P. 216-299a)
Professor Elaine A. Carlson, Chair
Judge David Peeples
Alistair Dawson
Bobby Meadows
Tom Riney
Kent Sullivan
Kennon Wooten
Justice Tracy Christopher
Justice Bill Boyce

Re: Revised Subcommittee Recommendations

Sept. 21, 2018

ATTORNEY USE OF SOCIAL MEDIA TO INVESTIGATE A JUROR

Issue:

To what extent may an attorney ethically use electronic social media (ESM) to investigate a prospective juror?[1]

[1] Throughout this comment, the term "social media" refers to "the wide array of Internet-based tools and platforms that increase and enhance the sharing of information," the "common goal [being] to maximize user accessibility and self-publication through a variety of different formats." *See Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees*, Committee on Codes of Conduct, Judicial Conference of the United States, Administrative Office of the United States Courts, April 2010, at 9, available at http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct. ESM includes, but is not limited to, Facebook, Myspace, LinkedIn, Twitter, blogs, etc.

Analysis:

Texas Disciplinary Rule of Professional Conduct 3.06 addresses communications with venire members and jurors and provides as follows:

> a) A lawyer shall not:
>
> (1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venireman or juror; or
>
> (2) seek to influence a venireman or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.
>
> (b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected or any juror or alternate juror, except in the course of official proceedings.
>
> (c) During the trial of a case, a lawyer not connected therewith shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.
>
> (d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.
>
> (e) All restrictions imposed by this Rule upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
>
> (f) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.
>
> (g) As used in this Rule, the terms "matter" and "pending" have the meanings specified in Rule 3.05(c).

Comments:

1. To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is not prohibited by this Rule so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Contacts with discharged jurors, however, are governed by procedural rules the violation of which could subject a lawyer to discipline under Rule 3.04. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

2. Vexatious or harassing investigations of jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

3. Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

4. Because of the extremely serious nature of any actions that threaten the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct. If such improper actions were taken by or on behalf of a lawyer, either the reporting lawyer or the court normally should initiate appropriate disciplinary proceedings. See Rules 1.05, 8.03, 8.04.

On April 24, 2014, the American Bar Association (ABA) issued Formal Opinion 466 on *Lawyer Reviewing Jurors' Internet Presence.* The opinion addresses the following three levels of lawyer review of juror Internet presence:

1. passive lawyer review of a juror's website or electronic social media that is available without making an access request where the juror is unaware that a website or electronic social media had been reviewed;
2. passive lawyer review where the juror becomes aware through a website or electronic social media feature of the identity of the viewer; and
3. active lawyer review where the lawyer requests access to the juror's electronic social media.

The ABA concluded that passive lawyer review of a juror's website or ESM without making an access request, where the juror is not aware of the review, is permissible. Specifically, such conduct does not constitute a prohibited "*ex parte* communication" with a juror or an improper attempt to influence a juror and thus does not violate ABA Model Rule 3.5(b). The ABA analogized this type of review to an attorney "driving down the street where the prospective juror lives to observe the environs in order to glean publicly available information that could inform the lawyer's jury-selection decisions."

Nor are ethical constraints violated by passive lawyer review when the juror becomes aware of the lawyer's identity through the social media provider, according to the ABA. *Accord* Pennsylvania State Bar Opinion, a. St. Bar Ass'n, Op. 2014-300 (2014) (concluding it is not a communication provided it is the website, not the attorney, that provides this information to the juror). The ABA reasoned that "the lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the ESM." This is akin to a neighbor's recognizing a lawyer's car driving down the juror's street and telling the juror that the lawyer had been seen driving down the street." This could occur, for example, when a person views another person's LinkedIn page, as the person whose page was reviewed is informed by LinkedIn of the identity of reviewers.

Several jurisdictions and ethic opinions have reached the contrary conclusion, determining that this conduct constitutes an improper *ex parte* communication with a juror. *See, e.g.*, Association of the Bar of the City of New York Committee on Professional Ethics, Formal Opinion 2012-2 (concluding that, if a juror discovers that an attorney has viewed their profile, this constitutes a communication *regardless of whether the attorney knew about it); accord* New York County Lawyers' Association Committee on Professional Ethics Formal Opinion 743; *see also* California, Rule 5-320: Contact with Jurors (providing in subpart (A) that "[a] member connected with a case shall not communicate directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case"). The full subcommittee of the SCAC voted at the December 1-2, 2017 meeting that this behavior constitutes an improper *ex parte* communication by a lawyer with a juror or prospective juror.

As to the third scenario—active lawyer review where the lawyer requests access to the juror's ESM—nearly all jurisdictions that have addressed the issue have concluded that this constitutes an improper *ex parte* communication with a juror. In Formal Opinion 466, the ABA opinion suggested, "This would be akin to driving down the juror's street, stopping the car, getting out, and asking the juror for permission to look inside the juror's house because the lawyer cannot see enough when just driving past." *See also* N.Y. Cnty. Lawyers' Ass'n, Formal Op. 743 (2011); Ass'n of the Bar of the City of N.Y. Comm. on Prof'l Ethics, Formal Op. 2012-2; Or. St. Bar Ass'n, Formal Op. 2013-189 (Feb. 2013); Pa. St. Bar Ass'n, Op. 2014-300 (2014); N. Y. St. Bar Ass'n Comm. & Fed. Litig. Sec., *Social Media Ethics Guidelines* (updated June 9, 2015); Lawyer Disciplinary Board of W. Va., L.E.O. 2015-02, at 18 (Sept. 22, 2015); Colo. Bar Ass'n Ethics Comm., Formal Op. 127 (Sept. 2015); *see also* U.S. Dist. Ct. Rules D. Id. L. Civ. R. 47.2; U.S. Dist. Ct. Rules N.D.N.Y., L.R. 47.6. The full subcommittee of the SCAC voted at the December 1-2, 2017 meeting that this behavior also constitutes an improper *ex parte* communication by a lawyer with a juror or prospective juror.

Recommendations of Subcommittee:

Based upon the votes of the full committee at the December 1-2, 2017 SCAC meeting, the subcommittee suggests the addition of the following comment to current Texas Disciplinary Rule of Professional Conduct 3.06

5. A lawyer's review of a prospective juror's or juror's website or electronic social media (ESM) that is publicly available without making an access request, is not an improper communication, contact, or an attempt to influence a juror. However, review by a lawyer or someone acting for the lawyer of a prospective juror's or a juror's ESM is improper where the lawyer knew or should have known the prospective juror or juror could become aware through a website or ESM feature of the identity of the viewer. [Counsel should use available technology to remain anonymous when viewing or causing another to view a prospective juror or juror's social media.[2]]

A lawyer or someone acting for the lawyer may not request access to the prospective juror's or juror's ESM (e.g., by making a friend request) or comment on the prospective juror's or juror's electronic social media or otherwise communicate with the prospective juror or juror [during the course of the official proceeding] through ESM.

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[2] The ABA adopted Comment 8 to Model Rule 1.1, which pertains to competence, to read as follows:

> Maintaining Competence
>
> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

A majority of states have adopted this approach. *See* http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html;

Other Issues:

Other issues arising from counsel's use of ESM encountered but not addressed as outside the charge to subcommittee:

A. Should counsel, in undertaking the permissible review of a venire member's or juror's ESM, discover improper conduct by that individual, what is the obligation of counsel to advise the court? Example: A Facebook page of a venire member suggests prior service on a jury but voir dire response is inapposite. (See Texas Disciplinary Rule 3.03(a)(2) ("A lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act") and Texas Disciplinary Rule 3.06(f) "A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge" assuming jurors have been instructed not to discuss the case on social media.)

B. May attorneys ethically advise their client to delete or change content on the client's ESM or websites? See *Lester v. Allied Concrete Co*., 736 S.E.2d 699, 285 Va. 295 (2013), wherein the Virginia Supreme Court affirmed the lower court's sanctions requiring counsel to pay $544.000 for instructing his client to remove photographs from his Facebook page and also utilized a spoliation instruction to the jury. The client was suing for wrongful death of his spouse resulting from a car accident. One of the photos depicted the surviving husband holding a beer and wearing a tee shirt with "I (heart) hot moms."

C. May attorneys ethically advise their clients not to comment on pending litigation or otherwise restrict the use of their ESM? Is there a duty to do so?

D. May attorneys ethically advise their client to change their privacy settings, for example, from public to private, until litigation is concluded? For example, NYCLA Ethics Opinion 745 concludes that New York attorneys may advise clients as to what they should not post on social media; what existing postings they may or may not

remove; the implication of social media posts; and to adjust privacy settings to the highest level of security. The opinion also addresses penalties for spoliation and concludes it is permissible for counsel to review what a client plans to publish on a social media page to guide the client. However, according to the opinion, counsel may not participate in the creation of presentation of false or misleading information.

E. May attorneys ethically investigate the ESM of other parties or witnesses? Members of the petite jury's family during trial?

F. Does a lawyer's familiarity with and ablilities relating to technology, including ESM affect the lawyer's competence?

The ABA adopted Comment 8 to Model Rule 1.1, which pertains to competence, to read as follows:

> Maintaining Competence
>
> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

A majority of states have adopted this approach. *See https://www.lawsitesblog.com/2017/03/another-state-adopts-duty-technology-competence-canada-may-also.html;* http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html; *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010) (affirming grant of new trial as juror falsely denied that he had prior juror service; suggesting party should exert reasonable efforts, including internet research, to examine potential jurors' litigation history).

Tab Q

Memorandum

To: Texas Supreme Court Advisory Committee

From: Legislative Mandates Subcommittee

Date: September 28, 2018

Re: Gun Violence Protective Orders

I. Matter referred to subcommittee

The Texas Supreme Court has requested that the SCAC ñdraft forms which could be included in a Protective Order Kit that would advise a judge about a respondentôs access to firearms and impose necessary limits.ò The Courtôs request stems from Governor Abbottôs *School and Firearm Safety Action Plan* (May 30, 2018). In the plan, the Governor calls for legislative consideration of ña red flag law allowing law enforcement, a family member, school employee, or a district attorney to file a petition seeking the removal of firearms from a potentially dangerous person only after legal due process is provided.ò A copy of the Governorôs proposal is attached.

II. Current Texas Statutory Provisions

Texas currently provides that a trial court may issue a protective order under the Texas Family Code, sections 6.504 and 81. Section 6.504 provides that any party to a suit for dissolution of a marriage may move for a protective order:

> On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Subtitle B, Title 4. (Texas Family Code Ä81.001 et seq.).

Section 81.001 of the Family Code, in turn, authorizes protective orders if the trial court finds that (1) family violence has occurred; and (2) it is likely to occur in the future:

> A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.

The two provisions differ in that section 81.001 requires a family violence finding and section 6.504 does not. Members of the same household, those in a dating relationship, or persons seeking to protect a child from abuse or family violence may request the order.

Section 85.022 lists the requirements of an order ñapplying to a person who committed family violence,ò and in subsection (b), authorizes a trial court to prohibit the person who committed the violence from possessing a firearm:

> (b) In a protective order, the court may prohibit the person found to have committed family violence from:
>
> . . . **(6) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision**. . .
>
> * * *
>
> (d) In a protective order, **the court shall suspend a license to carry a handgun issued under Subchapter H, 1 Chapter 411, Government Code, that is held by a person found to have committed family violence**.

Section 85.022 authorizes a trial court to prohibit firearm possession for those found to have committed family violence. But in section 85.026, the Family Code provides that **every** protective order issued under the chapter must contain a warning, either boldfaced, underlined, or in all caps, regarding the possession of a firearm. The warning must be included in temporary orders, including a temporary ex parte order:

> ñIT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.ò

The warning about the possession of firearms is required regardless of whether the order contains a family violence finding or expressly prohibits the possession of firearms. Thus, although the prohibition is discretionary and applies to family violence cases, judges who work on these cases typically include the prohibition against possessing a firearm. Why? As discussed in the next section, the warning stems from Texas Penal Code Ä46.04 (although that provision does not refer to ammunition), which makes it a misdemeanor to possess a firearm while subject to a protective order. A protective order may last for up to two years, depending on the trial courtôs findings.

The Family Code protective order statute Ä71.002 establishes jurisdiction and Ä82.003 determines venue for family protective orders. Criminal protective orders are governed by the Code of Criminal Procedure Chapter 7A. There is no protective order statute related to mental health commitments. A designated domestic violence district court (for example, the 280th District Court in Harris County) hears all protective order applications filed in the county.

For criminal protective orders, the Code of Criminal Procedure authorizes a magistrate to issue a protective order that prohibits the defendant from possessing a firearm and ñshall suspendò a license to carry a handgun, when the defendant has been arrested for family violence and other enumerated offenses. *See* TEX. CODE CRIM. P. art. 17.292(b)(4), (l). The victim of the offense, the guardian of the victim, a peace officer or an attorney representing the state may request the order. *Id.* at (a)(1-4).

III. Enforcement

In addition to enforcement by contempt when there is an express prohibition against possessing a firearm, it is a criminal offense under Texas Penal Code Ä46.04(c) to possess a firearm while subject to a protective order under the Family Code, *regardless of whether the order itself expressly forbids the possession of a firearm*:

> (c) A person, other than a peace officer, . . . who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Chapter 7A, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

A violation of the provision is a class A misdemeanor. Section 46.04(c) has an exception for on-duty law enforcement, but otherwise has no exceptions.

The court issuing the protective order generally addresses the surrender of firearms. Some courts ask the respondent for proof of compliance with the prohibition. Other counties (like Tarrant County) have a surrender policy in cooperation with local law enforcement agencies, in which the firearm is held by the law enforcement agency during the pendency of the protective order. Once the protective order expires or is otherwise set aside, the respondent collects the firearm.

IV. The Texas Protective Order Kit

In 2012, the Texas Supreme Court adopted a ñprotective order kit,ò designed to educate people with a family law dispute about protective orders. The description notes that a protective

order can ñorder the other person to not have a gun or a license to carry a gun.ò A copy of the protective order kit is attached.

V. Other States' Laws

Although the idea of gun violence restraining orders (or GVROs) has generated discussion across the country, only California has passed legislation enacting laws governing such orders. *See* Cal. Penal Code Ä18180 et seq. The judiciary in California has promulgated forms for petitioners and respondents who are seeking or responding to a request for a gun violence restraining order. Both Florida and North Carolina have considered GVRO legislation, but it has not been enacted. A copy of the California law is attached. Relevant among its provisions:

- It allows an immediate family member or a law enforcement officer to request the order.
- After notice, a hearing, and grounds established by clear and convincing evidence, it provides that a trial court shall enjoin a respondent from possessing, owning, purchasing, or receiving firearms.
- The restrained person may request one hearing to terminate the order at any time during its effective period, and the court must terminate the order if there is no longer clear and convincing evidence of the grounds to support an order.
- It requires the restrained person to surrender firearms and ammunition.
- The court may consider evidence that demonstrates an ñincreased risk for violence in assessing whether there is a significant danger to the respondent or others and whether less restrictive means are inadequate.
- The court must find, by clear and convincing evidence, that the respondent ñposes a significant danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition,ò and that ñless restrictive meansò have been ineffective or are inadequate or inappropriate for the circumstances.

Tab R

PROTECTIVE ORDERS

What is a Protective Order?

It is a court order that protects you from someone who has been violent or threatened to be violent. Violence can include sexual assault.

How can a Protective Order help me?

It can order the other person to:

- Not hurt you or threaten to hurt you
- Not contact you or go near you, your children, other family relatives, your pets, your home, where you work, or your children's schools
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a Protective Order?

You can get a Protective Order if:

- Someone has hurt you, or threatened to hurt you, **and**
- You are afraid that person may hurt you again, **and**
- Either you, or your spouse or dating partner has a close relationship with the person who hurt you (a close relationship includes: marriage, close relatives, dating or living together, or having a child together).

You can also get a Protective Order if you have had a Protective Order against the other person before and the other person violated the parts of the Protective Order designed to protect you.

You can also get a Protective Order if you have been sexually assaulted or stalked, even if you do not have a close relationship with the person who sexually assaulted or stalked you. To get more information about this kind of Protective Order, contact the Texas Advocacy Project, Inc. at 800/374-HOPE(4673) or the Texas Association Against Sexual Assault at 512-474-7190.

How much does it cost?

It is free for you.

How do I ask for a Protective Order?

Fill out the forms in this kit:

- Application for Protective Order
- Either an Affidavit *or* Declaration
- Temporary Ex Parte Protective Order
- Protective Order
- Respondent Information

Do I use the Affidavit or the Declaration form?

An Application for Protective Order needs to include either a completed Affidavit or Declaration form. You only need to complete one of these forms. Do NOT complete both forms.

- Complete the Affidavit form if you want your Date of Birth and Address kept confidential. An Affidavit must be signed in front of a notary.
- Complete the Declaration form if you want your Date of Birth and Address to be public information (not confidential). A Declaration does NOT have to be signed in front of a notary.

Where do I file the forms?

After you fill out the forms, take the forms with 2 copies to the courthouse. File them in the county where you or the other person lives. But if you have a divorce or custody case pending against the other person, file the forms in that same county or the county where you live.

What if the other person and I live together or have children together?

The judge can make orders about who gets to use the house, apartment or car.

The judge can also make other orders, like child custody, child support, visitation, and spousal support. The judge can also make an order to protect pets.

Can I get protection right away?

The judge may give you a temporary order that protects you until your court hearing. This order is called a "Temporary Ex Parte Protective Order". Please note: if you do not receive a court document entitled "Temporary Ex Parte Protective Order" that is signed by the judge after you apply, you do NOT have a protective order yet. You must go to a hearing and ask the judge for a Protective Order.

In some cases, the judge orders the other person to leave the home right away. If you want this, you should ask the judge. Be ready to testify at a hearing when you file your Application.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks. The judge will decide if you should have protection and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court* in this kit. Or get it from the court clerk or from: **www.texaslawhelp.org/protectiveorderkit**

How will the other person know about the Protective Order?

You must have the other person "served" ***before*** the court hearing. This means someone—not you—will serve (*give*) the other person a copy of your application for a protective order. Please note: when the other person receives your application for a Protective Order, they will also receive a copy of your signed Affidavit or Declaration. Also, if the other person is in the military, a copy of the application for protective order and Affidavit or Declaration will be sent to the officials on base.

The clerk can arrange for law enforcement to serve the other person the court papers for FREE (for you).

How long will the Protective Order be in place?

In most cases, a Protective Order will last up to two years. There are some situations where a court can issue a Protective Order that lasts longer than two years.

Need help?

There is an instruction sheet for each form. But, if you need more help, contact: Family Violence Legal Line: **800-374-HOPE (4673)** Or, go to: **www.texaslawhelp.org/protectiveorderkit**

Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help for free. The State Bar of Texas may also be able to refer you to a lawyer if you call 800-252-9690.

Get Ready for Court

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end and you will have to start from the beginning.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you.
- Bring any evidence you have, like photographs, medical records, torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative or police. The judge may ask them to testify.
- If you had a Protective Order in the past, bring a copy of it.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court. Proof of Service is a document that shows when and where the other person was given a copy of the Application for Protective Order.

Get there 30 minutes early.

- Find the courtroom.
- When the courtroom opens, go in and tell the clerk or officer that you are present.
- Watch the other cases so you will know what to do.
- When your name is called, go to the front of the courtroom.

What if I don't speak English?

When you file your papers, tell the clerk you will need an interpreter. Ask the court clerk if you qualify for any free interpretation services.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you file your papers, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE (4673)**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE (7233)**

Practice what you want to say.

Make a list of the orders you want and practice saying them. Do not take more than 3 minutes to say what you want.

If you get nervous at the hearing, just read from your list. Use that list to see if the judge has made every order you asked for.

The judge may ask questions.

The other person or his or her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers. If you don't understand, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What happens after the hearing?

If the judge agrees you need protection, the judge will sign your Protective Order.

Take your signed order to the court clerk. Ask for copies of your order (or make extra copies) and keep one with you at all times.

Make sure copies of your order are sent to your children's daycare, babysitter, school, and to the other person's military superior, if they have one. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call Family Violence Legal Line: **800-374-HOPE (4673)**

Or go to:
www.texaslawhelp.org/protectiveorderkit

Make A Safety Plan

A safety plan can help keep you and your children safe. Ask a domestic violence counselor to help you with your plan.

During an Attack

When an attack starts, try to escape. Leave your home and take your children, *no matter what time it is*!

- Go to a friend's house or to a domestic violence shelter. Call 1-800-799-SAFE (7233) to find a shelter near you.
- Defend and protect yourself. Later, take photos of your injuries.
- Call for help. Scream as loud and as long as you can.
- Stay close to a door or window so you can get out if you need to.
- Stay away from the bathroom, kitchen, and weapons.

Be Ready to Leave

Leaving is the most dangerous time. Thinking about your safety plan before you leave will help you when the time comes.

- Practice your escape. Know which doors, windows, elevator, or stairs are best. Practice with your children if they are old enough.
- Have a safe place to go in an emergency. Memorize their phone number.
- Keep a cell phone or calling card with you always so you can call in an emergency.
- Ask a neighbor and a co-worker to call the police if they see or hear abuse.
- Get rid of guns and weapons in your house.
- Teach your children how to dial 911 to get help in an emergency.
- Have a safety plan for your children when you can't be with them. Teach them the plan.
- Have a "code word" to use with your children, family, friends, and neighbors. Ask them to call the police when you say that word.
- Keep a bag ready with clothes and extra keys for your house and car. Hide it in a place you can get to quickly. Or leave it at a friend's house.
- Get your own post office box so you can safely get checks and mail.
- Open your own checking or savings account and try to get a credit card in your name.
- Put important things in a safe place where you can get them easily, such as your:
  - Medicines
  - Driver's license, ID, social security card
  - Cash, check book, credit cards
  - Legal papers, important phone numbers.
- Make plans for your pets if you have them.
- Review your safety plan a lot and make changes to it if you need to.

Be Safe With Technology

- Get a new email address.
- Change your passwords and PIN numbers often.
- Search your name on the internet to see if your phone numbers or address are listed.
- If you have an online page, "de-friend" your partner or make a new page.
- Use a computer that your partner doesn't know about like at a library or friend's house.
- Get a cell phone that your partner doesn't know about. Call the domestic violence shelter and ask them if they can give you a donated cell phone. Call 1-800-799-SAFE (7233).
- Save emergency phone numbers with a made up name in your cell phone. For example, you can name the domestic violence shelter in your cell as "Angie."

Be Safe When You Live on Your Own

- Change the locks on your doors as soon as you can.
- Put locks on all your doors and windows.
- Ask your phone company for an unlisted number. Sometimes this is free. Don't call your partner from your phone. Screen all your calls.
- If you move, don't tell your partner where you live.
- Give your children's school or daycare a list of who is allowed to pick up your children.
- Tell your neighbors and landlord that your partner no longer lives with you. Ask them to call the police if they see your partner near your home.
- Take care of yourself by asking for what you need and going to a support group.
- If you have to see your partner, meet in a public place and bring someone with you.

Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

- If you are thinking about going back to your partner, talk to someone you trust first.
- Be safe at work by asking your co-workers to call the police if they see your partner at your job. Bring a picture of your partner to work.
- Take a different way home and to work. Go to different stores and places. Change your routine.
- If you drive, park where there is a lot of light.
- Have someone walk with you to your car or to the bus stop.

Be Safe With a Protective Order

- Always keep your Protective Order with you and call the police if your partner violates it.
- Give copies of your protective order to your family, friends, neighbors, school, and daycare.

Important Phone Numbers

Police and Emergencies 911

National Domestic Violence (DV) Hotline
1-800-799-SAFE (7233)
1-800-787-3224 (TTY) for the Deaf

Texas Council on Family Violence
1-800-525-1978

First Call for Help
1-800-HELP-5555 (1-800-4357-5555)

Child and Elderly Abuse/Neglect
1-800-252-5400

Rape Abuse & Incest National Network
1-800-656-HOPE (4673)

Texas Advocacy Project—Legal Line
1-800-374-HOPE (4673)

Lawyer Referral Service
1-877-9TEXASBAR or 1-800-252-9690

Child Support Office
1-800-252-8014

Crime Victim's Compensation
1-800-983-9933

Important Things to Take With You

Identification—

- ☐ Driver's License
- ☐ Birth Certificate
- ☐ Social Security Card
- ☐ Children's Birth Certificate and Social Security Cards

Financial—

- ☐ Money and credit cards in your name
- ☐ Checking and savings account numbers

Legal Papers—

- ☐ Protective Order
- ☐ Lease or house papers
- ☐ Car registration and insurance
- ☐ Health and life insurance papers
- ☐ Medical records for you and your children
- ☐ School records
- ☐ Work permits/Green Cards/Visa
- ☐ Passport
- ☐ Divorce and custody papers
- ☐ Marriage license
- ☐ Mortgage and loan payment books and account numbers

Other—

- ☐ Medications
- ☐ House and car keys
- ☐ Valuable jewelry
- ☐ Address book
- ☐ Pictures
- ☐ Clothes for you and your children
- ☐ Diapers and formula
- ☐ Pets

Keep these papers in a safe place where your partner can't find them!

Information also provided by: Texas RioGrande Legal Aid & the Texas Council on Family Violence

Cause No.: _____

Applicant: _____ (Your name here. You are the Applicant.) § In the _____ Court

§

§ (The clerk fills out this part)

v

§ (Name of person you want protection from. This is the Respondent.)

§

§

Respondent: _____ § _____ County, Texas

Application for Protective Order

1 Parties (Your name here.)

Name:

Applicant: _____ (Name of person you want protection from) County of Resid… (County where each person lives) _____

Respondent: _____ (Best address to give the other person a copy of this form) _____

Respondent's address for service: _____

Check all that apply:

☐ The Applicant and Respondent are or were members of the same family or household.
☐ The Applicant and Respondent are parents of the same child or children.
☐ The Applicant and Respondent used to be married.
☐ The Applicant and Respondent are or were dating.
☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
☐ The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?	County of Residence:
a.	_____ (Names of children needing protection)	☐ Yes ☐ No	_____ (County where each person lives)
b.	_____	☐ Yes ☐ No	_____
c.	_____	☐ Yes ☐ No	_____
d.	_____	☐ Yes ☐ No	_____

Check all that apply:

☐ Other children are listed on a sheet attached to this Application.
☐ The Children are or were members of the Applicant's family or household.
☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____ (Names of other adults needing protection)	_____ (County where each person lives)
b.	_____	_____

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): ☐ A copy of the final order is attached.
☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? *Check o…* (Read and check one or both)

☐ The Respondent committed family violence and is likely to commit fa… …ture.
☐ The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): ☐ Attached, or
☐ Not… …ing on this Application

The Applicant requests a PROTECTIVE ORDER and asks the Court to make the Orders marked with a check ☑

Check all the orders you want the judge to make

6 ☑ Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ☑ Not commit family violence against any person named on page 1 of this form.
b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.
c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.
d. ☐ Not communicate or attempt to communicate in any manner with (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
   The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.
e. ☐ Not go within 200 yards of the (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
f. ☐ Not go within 200 yards of the residence, workplace or school of the (*Check all that apply*):
   ☐ Applicant ☐ Other Adults named on page 1 of this form.
g. ☐ Not go within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a possession schedule entered by the Court.
h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.
j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.
k. ☐ Prohibit the Respondent from harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal or assistance animal: _____ (describe the animal).
l. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
   _____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

Your home address here, unless you want it to be confidential.

The Residence located at: _____

(*Check one*): ☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders (*Check all that apply*):

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.
☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.
☐ The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:
_____
_____

List the property you want to use or control, like a car or furniture, even if the other person owns it with you.

☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

Sample Only — Do Not File

8 ☐ Spousal Support Order

Check here if you want spousal support.

The Respondent or otherwise legally entitled to support from the Respondent and asks that the Respondent be ordered to pay support in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Respondent is the parent of the Applicant's children: _____

_____

_____

Check here and fill out this section if you want the judge to make orders about who the children can stay with, restrictions on travel, and child support.

And, the Applicant requests these Orders in the best interest of the people named on page 1 of this form.

Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☑ Temporary Ex Parte Protective Order

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

Check here if you want the judge to order the other person to move out.

The Respondent at: Your home address here or has resided at this address within the 30 days prior to the filing of this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

Check here if you want to keep your contact information private.

The Court will keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

Sign Here

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

List your address/phone or another address/phone if you want yours kept confidential.

Phone # where Applicant may be contacted: _____

(*List another address/phone if you want yours kept confidential*)

Sample Only — Do Not File

Use this form if YOU WANT your Date of Birth and Address to REMAIN CONFINDENTIAL.

You will need to have it SIGNED BY A NOTARY.

Do NOT use the Declaration form if you use this form.

AFFIDAVIT

County of ____ (Write the name of your county here) ____

State of Texas

My name is _____ (Your name here) _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____

_____

_____

_____

(Answer every question on this form)

2. What date did this happen? _____ / ____ / _____
3. Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____
4. Were any children there? ☐ Yes ☐ No If yes, who? _____
5. Did you call the police? ☐ Yes ☐ No If yes, what happened? _____
6. Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

_____

_____

_____

7. Has the Respondent ever threatened or hurt you ***before***? Describe below, including date(s).

_____

_____

_____

8. Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____
9. Were any children there? ☐ Yes ☐ No If yes, who? _____
10. Have the police ever been called? ☐ Yes ☐ No _____
11. Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____

_____

_____

12. Has the Defendant ever been convicted of family violence? ☐ Yes ☐ No
If yes, list when and in which county and state the convictions occurred: _____

_____

_____

(Do NOT sign until the notary tells you to.)

▶ _____
Applicant signs here

On ____/ _____/ _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is qualified to make this oath, that she/he has read the foregoing Application and Affidavit, that she/he has personal knowledge of the facts asserted, and the facts asserted are true and to the best of her/his belief.

(Notary fills out this part)

Subscribed and sworn to before me on ____/ ____/ _____.

▶ _____
Notary Public in and for the State of Texas

Sample Only — Do Not File

Use this form if you want your Date of Birth and Address to be public information (not confidential).

You will NOT need to have it signed by a notary.

Do NOT use the Affidavit form if you use this form.

DECLARATION

County of _____ (Write the name of your county here)
State of Texas

My name is _____ (Your name here) (First Middle Last), my date of birth is _____ (Your date of birth here),
and my address is_____ (Your address here) _____(Street), _____
(City), _____ (State), _____ (Zip Code) _____(Country)_____.

I declare under penalty of perjury that the fore[illegible]est.

Executed in _____ County, State [illegible] (Write your County, State, and the Date you signed here) day of_____ (Month), _____ (Year).

_____ (Sign your name here) _____(Declarant Signature).

1. Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____
_____
_____
_____

(Answer every question on this form)

2. What date did this happen? _____ / ____ / _____
3. Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____
4. Were any children there? ☐ Yes ☐ No If yes, who? _____
5. Did you call the police? ☐ Yes ☐ No If yes, what happened?
6. Did you get medical care? ☐ Yes ☐ No If yes, describe your inj

(If it happened in the last 30 days, the judge can order the Respondent to move out.)

_____
_____
_____

7. Has the Respondent ever threatened or hurt you ***before***? Describe below, including date(s).

_____
_____
_____

8. Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____
9. Were any children there? ☐ Yes ☐ No If yes, who? _____
10. Have the police ever been called? ☐ Yes ☐ No _____
11. Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____
_____
_____

12. Has the Defendant ever been convicted of family violence? ☐ Yes ☐ No
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

(Sign Here)
▶ _____
Applicant signs here

Sample Only — Do Not File

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
	§	
Respondent: _____	§	_____ County, Texas

Application for Protective Order

1 Parties

Name: County of Residence:

Applicant: _____ _____

Respondent: _____ _____

Respondent's address for service: _____

Check all that apply:

☐ The Applicant and Respondent are or were members of the same family or household.
☐ The Applicant and Respondent are parents of the same child or children.
☐ The Applicant and Respondent used to be married.
☐ The Applicant and Respondent are or were dating.
☐ The Applicant is an adult asking for protection for the Children named below from child abuse and/or family or dating violence.
☐ The Applicant is dating or married to a person who was married to or dating the Respondent.

2 Children: The Applicant is asking for protection for these Children under age 18:

	Name:	Is Respondent the biological parent?		County of Residence:
a.	_____	☐ Yes	☐ No	_____
b.	_____	☐ Yes	☐ No	_____
c.	_____	☐ Yes	☐ No	_____
d.	_____	☐ Yes	☐ No	_____

Check all that apply:

☐ Other children are listed on a sheet attached to this Application.
☐ The Children are or were members of the Applicant's family or household.
☐ The Children are the subject of a court order affecting access to them or their support.

3 Other Adults: The Applicant is asking for protection for these Adults, who are or were members of the Applicant's family or household, or are in a dating or marriage relationship with the Applicant.

	Name:	County of Residence:
a.	_____	_____
b.	_____	_____

4 Other Court Cases: Are there other court cases, like divorce, custody, support, involving the Applicant, Respondent, or the Children?

☐ Yes ☐ No

If "Yes," say what kind of case and if the case is active or completed.

_____

If "completed," (*check one*): ☐ A copy of the final order is attached.
☐ A copy of the final order will be filed before the hearing on this Application.

5 Grounds: Why is the Applicant asking for this Protective Order? *Check one or both*:

☐ The Respondent committed family violence and is likely to commit family violence in the future.
☐ The Respondent violated a prior Protective Order that expired, or will expire in 30 days or less. A copy of the Order is (*check one*): ☐ Attached, or
☐ Not available now but will be filed before the hearing on this Application

The Applicant requests a PROTECTIVE ORDER and asks the Court to make all Orders marked with a check ☑

6 ☑ Orders to Prevent Family Violence

The Applicant asks the Court to order the Respondent to (*Check all that apply*):

a. ☑ Not commit family violence against any person named on page 1 of this form.
b. ☐ Not communicate in a threatening or harassing manner with any person named on page 1 of this form.
c. ☐ Not communicate a threat through any person to any person named on page 1 of this form.
d. ☐ Not communicate or attempt to communicate in any manner with (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
   The Respondent may communicate through: _____ or other person the Court appoints. Good cause exists for prohibiting the Respondent's direct communications.
e. ☐ Not go within 200 yards of the (*Check all that apply*):
   ☐ Applicant ☐ Children ☐ Other Adults named on page 1 of this form.
f. ☐ Not go within 200 yards of the residence, workplace or school of the (*Check all that apply*):
   ☐ Applicant ☐ Other Adults named on page 1 of this form.
g. ☐ Not go within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a possession schedule entered by the Court.
h. ☐ Not stalk, follow or engage in conduct directed specifically to anyone named on page 1 of this form that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

The Applicant also asks the Court to make these Orders (*Check all that apply*):

i. ☐ Suspend any license to carry a concealed handgun issued to the Respondent under state law.
j. ☐ Require the Respondent to complete a battering intervention and prevention program; or if no such program is available, counseling with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor; and pay all costs for the counseling or treatment ordered.
k. ☐ Prohibit the Respondent from harming, threatening, or interfering with the care, custody, or control of the following pet, companion animal or assistance animal: _____ (describe the animal).
l. ☐ Require the Respondent to follow these provisions to prevent or reduce the likelihood of family violence.
   _____

The law requires a trial court issuing a protective order to prohibit the Respondent from possessing a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

7 ☐ Property Orders

The Residence located at:_____

(*Check one*): ☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Applicant also asks the Court to make these orders (*Check all that apply*):

☐ The Applicant to have exclusive use of the Residence identified above, and the Respondent must vacate the Residence.

☐ The sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

☐ The Applicant to have exclusive use of the following property that the Applicant and Respondent jointly own or lease:
_____
_____

☐ The Respondent must not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly owned or possessed by the parties (whether so titled or not).

8 ☐ Spousal Support Order

The Applicant is married to the Respondent or otherwise legally entitled to support from the Respondent and asks the Court to order the Respondent to pay support in an amount set by the Court.

9 ☐ Orders Related to Removal, Possession and Support of Children

The Respondent is a parent of the following of the Applicant's children:_____

_____

_____

And, the Applicant asks for these Orders in the best interest of the people named on page 1 of this form.
Check all that apply:

- ☐ The Respondent must not remove the children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- ☐ The Respondent must not remove the children from the jurisdiction of the Court.
- ☐ Establish or modify a schedule for the Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- ☐ Require the Respondent to pay child support in an amount set by the Court.

10 ☑ Temporary Ex Parte PROTECTIVE ORDER

Based on the information in the attached Affidavit or Declaration, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named on page 1 of this form immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. Applicant asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing.

11 ☐ Ex Parte Order: Vacate Residence Immediately

The Applicant now lives with the Respondent at: _____ or has resided at this Residence within the 30 days prior to filing this Application. The Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as described in the attached Affidavit or Declaration. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household. The Applicant is available for a hearing but asks the Court to issue a Temporary Ex Parte Protective Order immediately without bond, notice or hearing:

- Granting the Applicant exclusive use and possession of the Residence and ordering the Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further Order of the Court; and
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant either takes possession of the Residence or removes necessary personal property.

12 ☐ Keep Information Confidential

The Applicant asks the Court to keep addresses and telephone numbers for residences, workplaces, schools, and childcare facilities confidential.

13 ☐ Fees And Costs

The Applicant asks the Court to order the Respondent to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

I have read the entire Application and it is true and correct to the best of my knowledge.

▶ _____

Applicant, *Pro se*

Address where Applicant may be contacted: _____

Phone # where Applicant may be contacted: _____ Fax #: _____
(*List another address/phone if you want yours kept confidential*)

AFFIDAVIT

County of _____

State of Texas

My name is _____ (First Middle Last). I am _____ years old and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

1. Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____

_____

_____

_____

2. What date did this happen? _____ / ____ / _____
3. Was a weapon involved? □ Yes □ No If yes, what kind? _____
4. Were any children there? □ Yes □ No If yes, who? _____
5. Did you call the police? □ Yes □ No If yes, what happened? _____
6. Did you get medical care? □ Yes □ No If yes, describe your injuries: _____

_____

_____

_____

7. Has the Respondent ever threatened or hurt you before? Describe below, including date(s).

_____

_____

_____

8. Were weapons ever involved? □ Yes □ No If yes, what kind? _____
9. Were any children there? □ Yes □ No If yes, who? _____
10. Have the police ever been called? □ Yes □ No
11. Did you ever have to get medical care? □ Yes □ No If yes, describe your injuries: _____

_____

_____

_____

12. Has the Defendant ever been convicted of family violence? □ Yes □ No
If yes, list when and in which county and state the convictions occurred: _____

_____

_____

▶ _____
Applicant signs here

On ____/ _____/ _____ the Applicant _____ personally appeared before me, the undersigned notary. After being sworn, the Applicant stated that she/he is qualified to make this oath, that she/he has read the foregoing Application and Affidavit, that she/he has personal knowledge of the facts asserted, and the facts asserted are true and to the best of her/his knowledge and belief.
Subscribed and sworn to before me on ____/ ____/ _____.

▶ _____
Notary Public in and for the State of Texas

My Commission expires: _____

DECLARATION

County of _____
State of Texas

My name is _____ (First Middle Last), my date of birth is _____,
and my address is_____(Street), _____
(City), _____ (State), _____ (Zip Code) _____(Country)_____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of_____ (Month), _____ (Year).
_____(Declarant Signature).

1. Describe the most recent time the Respondent hurt you or threatened to hurt you:

_____
_____
_____
_____

2. What date did this happen? _____ / ____ / _____
3. Was a weapon involved? ☐ Yes ☐ No If yes, what kind? _____
4. Were any children there? ☐ Yes ☐ No If yes, who? _____
5. Did you call the police? ☐ Yes ☐ No If yes, what happened? _____
6. Did you get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____
_____
_____

7. Has the Respondent ever threatened or hurt you ***before***? Describe below, including date(s).

_____
_____
_____

8. Were weapons ever involved? ☐ Yes ☐ No If yes, what kind? _____
9. Were any children there? ☐ Yes ☐ No If yes, who? _____
10. Have the police ever been called? ☐ Yes ☐ No _____
11. Did you ever have to get medical care? ☐ Yes ☐ No If yes, describe your injuries: _____

_____
_____
_____

12. Has the Defendant ever been convicted of family violence? ☐ Yes ☐ No
If yes, list when and in which county and state the convictions occurred: _____

_____
_____

▶ _____
Applicant signs here

Cause No.: _____

Applicant: _____ § In the _____ Court

§

v. Look at the top of your Application for Protective Order and copy the same information here. of

§

Respondent: _____ § _____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time:_____ ☐ a.m. The court fills out this part.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 Respondent: The person named below must follow all Orders marked with a check.

Name: _____ (Who do you want protection from?) _____ County of Residence: _____ (What county does s/he live in?)

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____ (Your name here)	_____ (County where each person lives)
☐ **Children:**	_____ (Names of children you want to be protected by this order)	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____ (Names of other adults needing protection)	_____
	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended injury, assault, or sexual assault or that is a threat that reasonably place physical harm, bodily injury, assault, or sexual assault.

The Court fills out the rest of this form. The judge may ask you questions before making the orders

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

Sample Only — Do Not File

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. ☐ Not interfere with the Applicant's use of the Residence located at: _____ _____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

n. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

4 ☐ Order: Vacate Residence Immediately

The Court finds that the Residence located at:
(*Check one*):

☐ is jointly owned or leased by the Applicant and Respondent;
☐ is solely owned or leased by the Applicant; or
☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before: _____ ☐ a.m. ☐ p.m. on: _____(*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

This Ex Parte Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

Cause No.: _____

Applicant: _____	§	In the _____ Court
	§	
v.	§	of
	§	
	§	
Respondent: _____	§	_____ County, Texas

Temporary Ex Parte Protective Order

Go to the court hearing on: Date: _____ Time:_____ ☐ a.m. ☐ p.m.

Court Address: _____

Findings: The Court finds from the sworn Affidavit or Declaration attached to the *Application for Protective Order* filed in this case that there is a clear and present danger that the Respondent named below will commit acts of family violence that will cause the Applicant, Children and/or Other Adults named below immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law. The Court, therefore, enters this *Temporary Ex Parte Protective Order* without further notice to the Respondent or hearing. No bond is required.

1 Respondent: The person named below must follow all Orders marked with a check.

Name: _____ County of Residence:_____

2 Protected People: The following people are protected by the terms of this PROTECTIVE ORDER:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____	_____

3 Temporary Orders — To prevent family violence, the Court orders the Respondent to obey all orders marked with a check. ☑

The Respondent (person named in 1) must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to any person named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. The Respondent may communicate through: _____ or other person the Court appoints.
Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except to go to court hearings)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

h. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The Clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

i. ☐ Not stalk, follow or engage in conduct directed specifically toward the Applicant, Children, or Other Adults named in **2** above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

j. ☐ Not remove the Children from their school, child-care facility, or the Applicant's possession.

k. ☐ Not remove the Children from the jurisdiction of the Court.

l. ☐ Not harm, or interfere with the care, custody, or control of the following pet, companion animal, or assistance animal: _____ (describe the animal).

m. ☐ Not interfere with the Applicant's use of the Residence located at: _____ _____, including, but not limited to, disconnecting utilities or telephone service or causing such services to be disconnected.

n. ☐ Not interfere with the Applicant's use and possession of the following property:
_____
_____

o. ☐ Not damage, transfer, encumber, or otherwise dispose of any property jointly owned or leased by the Applicant and Respondent, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

4 ☐ Order: Vacate Residence Immediately

The Court finds that the Residence located at:
(*Check one*):

- ☐ is jointly owned or leased by the Applicant and Respondent;
- ☐ is solely owned or leased by the Applicant; or
- ☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

The Court further finds that the Applicant currently resides at the Residence, or has resided there within 30 days prior to the filing of the *Application for Protective Order* in this case, and that the Respondent has committed family violence against a member of the household within 30 days prior to the filing of the *Application for Protective Order* in this case. There is a clear and present danger that the Respondent is likely to commit family violence against a member of the household.

The Respondent is therefore ORDERED to vacate the Residence on or before:_____ ☐ a.m. ☐ p.m. on: _____(*date*) and to remain at least 200 yards away from the Residence until further order of the Court. The Applicant shall have exclusive use and possession of the Residence until further order of the Court.

IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to vacate the Residence, and to provide protection while the Applicant takes possession of the Residence, and if the Respondent refuses to vacate the Residence, provide protection while the Applicant takes possession of the Applicant's necessary personal property.

5 Go to the Court Hearing

IT IS FURTHER ORDERED that notice issue to the Respondent to appear, and the Respondent is ORDERED to appear in person before this Court at the time and place indicated on page 1 of this form.

The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the *Application for Protective Order* filed in this case.

6 Duration of Order: This Order is effective immediately and shall continue in full force and effect until twenty (20) days from the date it is signed, or further order of the Court.

7 Warning: A person who violates this order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

This Ex Parte Order signed on (*date*): _____ Time:_____ ☐ a.m. ☐ p.m.

Judge Presiding: ▶ _____

This is a Court Order. No one – except the Court – can change this Order.

IN THE_____COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____
Your name here

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____
Names of children needing protection

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____
Names of other adults needing protection

VS.

Respondent

_____
Name of person you want protection from

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR			(Last 3 #)

Fill out information describing the person you want protection from

DRIVERS LICENSE NO.	STATE	EXP DATE

Distinguishing F

_____

For example: tattoos, piercings, scars, facial hair

A Court hearing was held on: Date: _____ Time:_____ □ a.m. □ p.m.

Write the actual date and time of the hearing

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been pr and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or as otherwise provided for in Section 14 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32); *or* the applicant is dating or married to a person who was married to or dating the Respondent.
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____ (Your name here)	_____ (County where each person lives)
☐ **Children:**	_____ (Names of children needing protection)	_____
	_____	_____
	_____	_____
☐ **Other Adults:**	_____ (Names of other adults needing protection)	_____
	_____	_____

3 A Record of Testimony (*Check one*): ☐ was made by: _____

☐ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑

The Respondent must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)
☐ Applicant ☐ Children ☐ Other Adults named in **2** above.
(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)
☐ Applicant ☐ Other Adults named in **2** above.
The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)
☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.
☐ Disclosed as follows:
Children's Residence: _____
Children's Child-care/School: _____
Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☐ Not harm, threaten, or interfere with the care, custody or control of the following pet, companion animal or assistance animal: _____ (*describe the animal*).

j. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*Check one*):

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____
(*Check one*):

- ☐ is jointly owned or leased by the Applicant and Respondent;
- ☐ is solely owned or leased by the Applicant; or
- ☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on: _____ (*date*).

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both*:

The Respondent must:

- ☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.
- ☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one*:

- ☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.
- ☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one*:

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $ _____ + *all other Court fees and costs*: $ _____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $ _____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $ _____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order (*Check all that apply*):

- ☐ Was served on the Respondent in open court.
- ☐ Shall be personally served on the Respondent.
- ☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
- ☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to (*Check all that apply*):

- ☐ Sheriff and Constable of _____ County, Texas.
- ☐ Police Chief of the City of _____.
- ☐ Children's child-care facility/schools listed above.
- ☐ The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until:

- ☐ _____ (*this date must be no more than two years from the date this Order is signed.*)
- ☐ _____ (*duration*) This date is more than two years from the date this Protective Order is signed.
  - ☐ The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of Applicant's family or household; or
  - ☐ The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

If Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

WARNING: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time:_____ □ a.m. □ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

IN THE_____COURT

_____ COUNTY, TEXAS

Protective Order

Cause No. _____

Judge: _____

Applicant/Petitioner

_____

First Middle Last

And/or on behalf of minor family member(s): (list name and DOB):

_____

_____

_____

Applicant/Petitioner Identifiers

Date of Birth of Applicant: _____

Other Protected Persons/DOB:

_____

_____

_____

VS.

Respondent

_____

First Middle Last

Relationship to Petitioner: _____

_____

Respondent's Address

_____

_____

Respondent Identifiers

SEX	RACE	DOB	HT	WT
EYES	HAIR	SOCIAL SECURITY NO. (Last 3 #)		
		_____ _____ _____		
DRIVERS LICENSE NO.			STATE	EXP DATE
_____				

Distinguishing Features: _____

_____

A Court hearing was held on: Date: _____ Time:_____ □ a.m. □ p.m.

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Respondent has been provided with reasonable notice and opportunity to be heard.

[✔] Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be prohibited from committing further acts of abuse or threats of abuse.

[ ] That the above named Respondent be prohibited from any contact with the Applicant/Petitioner.

[✔] Additional terms of this order as set forth below.

The terms of this Order shall be effective until _____, 20_____, or as otherwise provided for in Section 14 Duration located on page 6 of this Order.

WARNINGS TO RESPONDENT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Only the Court can change this order.

Findings: All legal requirements have been met, and the Court has jurisdiction over the parties and this case. This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.

- ☐ The Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32); *or* the applicant is dating or married to a person who was married to or dating the Respondent.
- ☐ The parties have agreed to the terms of this Protective Order.

Statutory grounds for the Protective Order have been established. (*Check one or both*):

- ☐ The Respondent has committed family violence against the Applicant or Children named below and is likely to commit family violence in the future.
- ☐ The Respondent has violated a prior Protective Order that expired or will expire within 30 days.

1 Appearances: (*Check any that apply*):

Applicant	Respondent	
☐	☐	Appeared in person and announced ready.
☐	☐	Appeared in person and by attorney, _____, and announced ready.
☐	☐	Appeared by signature below evidencing agreement to the entry of this Protective Order.
	☐	Although duly cited, did not appear and wholly made default.

2 Protected People: The following people are protected by the terms of this Protective Order:

	Name:	County of Residence:
☐ **Applicant:**	_____	_____
☐ **Children:**	_____	_____
	_____	_____
	_____	_____
☐ **Other**	_____	_____
Adults:	_____	_____

3 A Record of Testimony (*Check one*): ☐ was made by: _____

☐ was waived by the parties.

4 Protective Orders — To prevent family violence, the Court orders the Respondent to obey all Orders marked with a check. ☑

The Respondent must:

a. ☐ Not commit an act against any person named in **2** above that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places those people in fear of imminent physical harm, bodily injury, assault, or sexual assault.

b. ☐ Not communicate in a threatening or harassing manner with any person named in **2** above.

c. ☐ Not communicate a threat through any person to anyone named in **2** above.

d. ☐ Not communicate or attempt to communicate in any manner with: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above. (except through: _____)

Good cause exists for prohibiting the Respondent's direct communications.

e. ☐ Not go within 200 yards of the: (*Check all that apply*)

☐ Applicant ☐ Children ☐ Other Adults named in **2** above.

(Except to go to court hearings or to exchange Children as authorized by a court order)

f. ☐ Not go within 200 yards of the Residence, workplace or school of the: (*Check all that apply*)

☐ Applicant ☐ Other Adults named in **2** above.

The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Applicant's Residence: _____

Applicant's Workplace/School: _____

Other: _____

g. ☐ Not go within 200 yards of the Children's Residence, child-care facility, or school, except as authorized by a court order. The addresses of the prohibited locations are: (*Check all that apply*)

☐ Deemed confidential. The clerk is ordered to strike the information from all public court records and maintain a confidential record of the information for Court use only.

☐ Disclosed as follows:

Children's Residence: _____

Children's Child-care/School: _____

Other: _____

h. ☐ Not stalk, follow or engage in conduct directed specifically to any person named in 2 above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them.

i. ☐ Not harm, threaten, or interfere with the care, custody or control of the following pet, companion animal or assistance animal: _____ (*describe the animal*).

j. ☑ Not possess a firearm or ammunition, unless the Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. Any license to carry a concealed handgun issued to the Respondent is hereby SUSPENDED.

5 Family Violence Prevention Program

☐ The Respondent is ordered to enroll in, pay costs for, and enter the program checked below no later than _____ / _____ / _____, and to complete the program by _____ / _____/ _____. (*Check one*):

☐ The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice:

_____

Or if no such Battering Intervention and Prevention Program is available, then:

☐ A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor:

_____

☐ The Respondent is ordered to comply with any recommendation or referral for additional or alternate counseling within seven (7) days of the recommendation, and ordered to complete any additional or alternate program recommended. The Respondent is ordered to sign a waiver for release of information upon enrollment so that participation in the program may be monitored by the Applicant and/or the Court.

☐ The Respondent must also follow these provisions to prevent family violence:

_____

_____

6 Property Orders

☐ The Court finds that the Residence located at: _____
(*Check one*):

- ☐ is jointly owned or leased by the Applicant and Respondent;
- ☐ is solely owned or leased by the Applicant; or
- ☐ is solely owned or leased by the Respondent; and the Respondent is obligated to support the Applicant or a child in the Applicant's possession.

☐ IT IS ORDERED that the Applicant shall have exclusive use of the Residence identified above, and the Respondent must vacate the Residence no later than: _____ ☐ a.m. ☐ p.m. on: _____ (*date*).

☐ IT IS FURTHER ORDERED that the sheriff, constable, or chief of police shall provide a law enforcement officer to accompany the Applicant to the Residence, to inform the Respondent that the Court has ordered the Respondent to be excluded from the Residence, to provide protection while the Applicant takes possession of the Residence and the Respondent removes any necessary personal property, and, if the Respondent refuses to vacate the Residence, to remove the Respondent from the Residence and arrest the Respondent for violating the Court's Order.

7 Other Property Orders

☐ The Court finds that the Applicant and Respondent jointly own or lease the following Additional Property, and awards the Applicant the exclusive use of:

_____

_____

The Respondent must not damage, transfer, encumber, or otherwise dispose of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business or for reasonable and necessary living expenses, including, but not limited to, removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).

8 Spousal Support Order

☐ IT IS ORDERED that the Respondent pay the Applicant support in the amount of $_____ per month, with the first payment due and payable on _____ / _____/ _____ and a like payment due and payable on the _____ day of each following month until further Order of this Court. IT IS ORDERED that all payments be sent to the Applicant at the address listed below and postmarked on or before the due date for each payment:

_____

9 Orders Related to Removal, Possession and Support of Children

The Court finds that the Respondent is a parent of the Children. The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named in **2** above.

☐ **Removal** — *Check one or both*:

The Respondent must:

- ☐ Not remove the Children from the Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.
- ☐ Not remove the Children from the jurisdiction of the Court.

☐ **Possession** — *Check one*:

- ☐ The Applicant is granted exclusive possession of the Children, and the Respondent shall have no possession or access to the Children, unless and until further Orders are entered by the Court. This Order supersedes any previous order granting the Respondent possession or access to the Children.
- ☐ The Applicant is granted primary possession of the Children, and the Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated herein as necessary for the safety of the Applicant and the Children. The possession

schedule hereby ordered supersedes any previous order granting the Respondent possession and access to the Children.

☐ The possession schedule previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's possession and access to the Children, except that no exchanges of the Children shall occur at a prohibited location described in this Protective Order.

☐ **Child Support — Nothing in this Protective Order shall be construed as relieving the Respondent of any past or future obligation to pay child support as previously ordered.** — *Check one*:

☐ The Respondent is ordered to pay child support to the Applicant in the amount of $_____ per month, with the first such payment due and payable on _____ / _____/ _____, and a like payment due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further Order of the Court, whichever occurs first.

The Respondent is ordered to make all child support payments payable to the Applicant, and must mail all payments to:

Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, TX 78265-9791

That agency will send the payment to the Applicant for the support of the Children. The Respondent must keep the child support registry informed of the Respondent's Residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of the Respondent to withhold court-ordered child support from the Respondent's earnings. **The existence of the Order for withholding from earnings for child support does not excuse the Respondent from personally making any child support payment herein, except to the extent the Respondent's employer actually makes the payment on behalf of the Respondent.**

☐ The Child Support Order previously entered on _____ / _____/ _____, in cause number _____, styled _____, shall continue to govern the Respondent's child support obligations with respect to the Children.

10 ☐ Fees and Costs

Within 60 days after this Order is signed, the Respondent must pay the Total Fees and Costs as follows:

Total to be paid: $_____

(*This includes fees for service*: $ _____ + *all other Court fees and costs*: $ _____)

Address where Respondent must pay the Clerk of the Court with cash, cashier's check, or money order:

_____

11 ☐ Attorney's Fees

Within 60 days after this Order is signed, the Respondent must pay the attorney who helped enter this Protective Order the Attorney Fees listed below. Pay with cash, cashier's check, or money order.

Attorney Fees awarded by the Court: $ _____

Attorney's name: _____

Attorney's address: _____

Attorney (*name*) _____ shall have and recover judgment against the Respondent (*name*) _____ for $ _____, such judgment bearing interest at _____ percent per annum compounded annually from the date this judgment and Order is signed until paid, for which let execution issue if it is not paid.

12 Service

This Protective Order (*Check all that apply*):

- ☐ Was served on the Respondent in open court.
- ☐ Shall be personally served on the Respondent.
- ☐ Shall be mailed by the Clerk of the Court to the Respondent's last known address.
- ☐ Shall be delivered to the Respondent by certified mail, return receipt requested, or by fax, to the Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.

13 Copies Forwarded

The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to (*Check all that apply*):

- ☐ Sheriff and Constable of _____ County, Texas.
- ☐ Police Chief of the City of _____.
- ☐ Children's child-care facility/schools listed above.
- ☐ The staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which Respondent is assigned.

Any law enforcement agency receiving a copy of this Protective Order MUST, within 10 days, enter all required information into the Department of Public Safety's statewide law enforcement information system.

14 Duration of Order

This Protective Order is in full force and effect until:

- ☐ _____ (*this date must be no more than two years from the date this Order is signed.*)
- ☐ _____ (*duration*) This date is more than two years from the date this Protective Order is signed.
  - ☐ The Court finds that the Respondent caused serious bodily injury to the Applicant or a member of Applicant's family or household; or
  - ☐ The Respondent was the subject of two or more previous Protective Orders protecting the Applicant and both of those Protective Orders contained findings that Respondent has committed family violence and the Respondent is likely to commit family violence in the future.

If Respondent is confined or imprisoned on the date this Protective Order is scheduled to expire, the Protective Order will expire one year after the date of the Respondent's release.

WARNING: A person who violates this Order may be punished for contempt of court by a fine of as much as $500 or by confinement in jail for as long as six months, or both.

No person, including a person who is protected by this Order, may give permission to anyone to ignore or violate any provision of this Order. During the time in which this Order is valid, every provision of this Order is in full force and effect unless a court changes the Order.

It is unlawful for any person, other than a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a Protective Order to possess a firearm or ammunition.

A violation of this Order by commission of an act prohibited by the Order may be punishable by a fine of as much as $4,000 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.

Possession of a firearm or ammunition while this Protective Order is in effect may subject respondent to federal criminal penalties. It is unlawful for any person who is subject to a Protective Order to knowingly purchase, rent, lease, or receive as a loan or gift from another, a handgun for the duration of this Order.

Interstate violation of this Protective Order may subject the Respondent to federal criminal penalties. This Protective Order is enforceable in all fifty states, the District of Columbia, tribal lands, and U.S. territories.

This Protective Order signed on (*date*): _____ Time:_____ □ a.m. □ p.m.

Judge Presiding: _____

This is a Court Order. No one – except the Court – can change this Order.

Agreed Order

By their signatures below, the Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

_____ _____

Applicant Respondent

Receipt Acknowledged – The Respondent hereby acknowledges receipt of a copy of this Protective Order.

_____

Respondent

Respondent Information for Protective Orders

If the Court grants you a Protective Order, then fill out this form and file it with the clerk. Unless otherwise noted, fill in information below for the Respondent. If you do not know the information requested, leave that section blank. Please try to provide, at a minimum, the Respondent's name, date of birth, sex, height, weight, eye color, hair color, and race. Law enforcement needs this information to serve (give) the Respondent with the Protective Order and enter the Respondent's information into the statewide law enforcement database.

If the Court does not grant you a Protective Order, then do not fill out this form.

Respondent's Name: _____

Alias (Nickname): _____

Respondent's Relationship to Applicant: _____

Respondent's Address: _____ City: _____State: _____Zip: ____

County: _____ Email Address: _____ Date of Birth: _____ Place of Birth: _____

SSN (*last 3#*) # ___ ___ ___ Identification Number/State: _____ /_____ Expiration Date: _____

Driver's License Number/State: _____ /_____ Expiration Date: _____

Other Identification Number: _____

Respondent □ is □ is not on active duty with the military

Sex: □ M □ F Height: ____ ft ____ in Weight: _____ lbs

Race
- □ American Indian or Alaskan Native (I)
- □ Asian Pacific Islander (A)
- □ Black (B)
- □ White (W)
- □ Unknown (All other non-whites) (U)

Other: _____

_____

Ethnicity
- □ Hispanic (H)
- □ Non-Hispanic (N)
- □ Unknown (U)

Eye color
- □ Black (BLK)
- □ Blue (BLU)
- □ Brown (BRO)
- □ Gray (GRY)
- □ Green (GRN)
- □ Hazel (HAZ)
- □ Maroon (MAR)
- □ Pink (PNK)
- □ Multicolored (MUL)
- □ Unknown (XXX)

Other _____

_____

Hair color
- □ Black (BLK)
- □ Blond or Strawberry (BLN)
- □ Brown (BRO)
- □ Gray or partially gray (GRY)
- □ Red or Auburn (RED)
- □ White (WHI)
- □ Sandy (SDY)
- □ Completely Bald or Unknown (xxx)

Other (*style/length*):

_____

_____

Skin
- □ Albino (ALB)
- □ Black (BLK)
- □ Dark (DRK)
- □ Dark Brown (DBR)
- □ Fair (FAR)
- □ Light (LGT)
- □ Light Brown (LBR)
- □ Medium (MED)
- □ Medium Brown (MBR)
- □ Olive (OLV)
- □ Ruddy (RUD)
- □ Sallow (SAL)
- □ Yellow (YEL)
- □ Unknown (XXX)

Other _____

Other Identifying Information (*Check all that apply to the Respondent and describe)*

- □ Glasses_____
- □ Beard _____
- □ Moustache _____
- □ Missing front teeth _____
- □ Bald _____
- □ Tattoos _____
- □ Scars _____
- □ Markings _____
- □ Piercings _____
- □ Mental Health Condition _____
- □ Drug/Alcohol Use _____
- □ Weapons _____
- □ Other_____
- □ Other_____

Respondent's Vehicle Information: Vehicle ID # (VIN): _____ Year: ____ Make: _____ Model: _____

Color: _____ License Plate #: _____ State:_____ License Plate Year of Expiration: _____

Respondent's Employment Information (name of employer): _____

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Hours/Dept: _____ Supervisor: _____

Respondent's Attorney (*Name*): _____ Phone: _____ Address: _____

_____ City: _____ State: _____ Zip: _____

Other people who may have information to help find Respondent:

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

*****Protected Person Information*****

(Use additional pages if necessary)

Name of Protected Person: _____

Sex: □ M F Date of Birth: _____ SSN (*last 3#*) ____ ____ ____ County: _____

Address: _____ City: _____ State: ____ Zip:_____

Race: □ Indian □ Asian □Black □White □ Unknown **Ethnicity:** □ Hispanic □ Non-Hispanic □ Unknown

Employment Information (*name of employer*):

_____

Address: _____ City: _____ State: ____ Zip:_____

Employment Information (*name of employer*):

_____

Address: _____ City: _____ State: ____ Zip:_____

*****Protected Child Information*****

(Use additional pages if necessary)

Name of Protected Child: _____

Sex: □ M □ F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip:_____

Race: □ Indian □ Asian □Black □White □ Unknown **Ethnicity:** □ Hispanic □ Non-Hispanic □ Unknown

Name of Protected Child: _____

Sex: □ M □ F Date of Birth: _____ Daycare or School Name: _____

Address: _____ City: _____ State: ____ Zip:_____

Race: □ Indian □ Asian □Black □White □ Unknown **Ethnicity:** □ Hispanic □ Non-Hispanic □ Unknown

Tab S

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 2. Weapons Generally (Refs & Annos)
Division 3.2. Gun Violence Restraining Orders (Refs & Annos)
Chapter 4. Gun Violence Restraining Order Issued After Notice and Hearing (Refs & Annos)

West's Ann.Cal.Penal Code § 18170

§ 18170. Petition to enjoin possession of firearm

Effective: January 1, 2016
Currentness

(a) An immediate family member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year.

(b) For purposes of this subdivision, "immediate family member" has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

Credits
(Added by Stats.2014, c. 872 (A.B.1014), § 3, eff. Jan. 1, 2015, operative Jan. 1, 2016.)

Editors' Notes

OPERATIVE EFFECT

<For operative effect of Division 3.2, see Penal Code § 18122.>

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West's Ann. Cal. Penal Code § 18170, CA PENAL § 18170
Current with urgency legislation through Ch. 520 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

Tab T

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 2. Weapons Generally (Refs & Annos)
Division 3.2. Gun Violence Restraining Orders (Refs & Annos)
Chapter 4. Gun Violence Restraining Order Issued After Notice and Hearing (Refs & Annos)

West's Ann.Cal.Penal Code § 18175

§ 18175. Evidence to be considered by court; burden of petitioner; duration of restraining order

Effective: January 1, 2016
Currentness

(a) In determining whether to issue a gun violence restraining order under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(b) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

(1) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable.

(c)(1) If the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition.

(2) If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect.

(d) A gun violence restraining order issued under this chapter has a duration of one year, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and renewal by further order of the court pursuant to Section 18190.

Credits

(Added by Stats.2014, c. 872 (A.B.1014), § 3, eff. Jan. 1, 2015, operative Jan. 1, 2016. Amended by Stats.2015, c. 303 (A.B.731), § 414, eff. Jan. 1, 2016.)

Editors' Notes

OPERATIVE EFFECT

<For operative effect of Division 3.2, see Penal Code § 18122.>

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West's Ann. Cal. Penal Code § 18175, CA PENAL § 18175
Current with urgency legislation through Ch. 520 of 2018 Reg.Sess, and all propositions on 2018 ballot.

Tab U

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 2. Weapons Generally (Refs & Annos)
Division 3.2. Gun Violence Restraining Orders (Refs & Annos)
Chapter 4. Gun Violence Restraining Order Issued After Notice and Hearing (Refs & Annos)

West's Ann.Cal.Penal Code § 18180

§ 18180. Gun violence restraining order; contents of order

Effective: January 1, 2016
Currentness

(a) A gun violence restraining order issued pursuant to this chapter shall include all of the following:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order expires.

(3) The address of the superior court for the county in which the restrained party resides.

(4) The following statement:

“To the restrained person: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms and ammunition that you own or possess in accordance with Section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm or ammunition, while this order is in effect. Pursuant to Section 18185, you have the right to request one hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.”

(b) When the court issues a gun violence restraining order under this chapter, the court shall inform the restrained person that he or she is entitled to one hearing to request a termination of the order, pursuant to Section 18185, and shall provide the restrained person with a form to request a hearing.

Credits

(Added by Stats.2014, c. 872 (A.B.1014), § 3, eff. Jan. 1, 2015, operative Jan. 1, 2016.)

Editors' Notes

OPERATIVE EFFECT

<For operative effect of Division 3.2, see Penal Code § 18122.>

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West's Ann. Cal. Penal Code § 18180, CA PENAL § 18180
Current with urgency legislation through Ch. 520 of 2018 Reg.Sess, and all propositions on 2018 ballot.

Tab V

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 2. Weapons Generally (Refs & Annos)
Division 3.2. Gun Violence Restraining Orders (Refs & Annos)
Chapter 4. Gun Violence Restraining Order Issued After Notice and Hearing (Refs & Annos)

West's Ann.Cal.Penal Code § 18185

§ 18185. Written request for hearing to terminate order

Effective: January 1, 2016
Currentness

(a) A person subject to a gun violence restraining order issued under this chapter may submit one written request at any time during the effective period of the order for a hearing to terminate the order.

(b) If the court finds after the hearing that there is no longer clear and convincing evidence to believe that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true, the court shall terminate the order.

Credits
(Added by Stats.2014, c. 872 (A.B.1014), § 3, eff. Jan. 1, 2015, operative Jan. 1, 2016.)

Editors' Notes

OPERATIVE EFFECT

<For operative effect of Division 3.2, see Penal Code § 18122.>

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West's Ann. Cal. Penal Code § 18185, CA PENAL § 18185
Current with urgency legislation through Ch. 520 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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Tab W

JUDICIAL DISCLOSURE SHEET FOR PROTECTIVE ORDERS

This form must accompany the filing of any protective order filed under the Texas Family Code or the Texas Code of Criminal Procedure.

To your knowledge:

1. Has the Respondent used or threatened to use a weapon in any way during a domestic violence incident or the commission of any crime? ☐ Yes ☐ No

2. Does the Respondent have a License to Carry a Handgun? ☐ Yes ☐ No ☐ I Don't Know

3. Does the Respondent have weapons or ammunition? ☐ Yes ☐ No ☐ I Don't Know
   If yes, please describe for each:

Weapon/ Ammunition Type	*How Many?*	*Where are they kept?*	*Does Respondent carry the weapon on them?*

Add additional pages as necessary.

_____ _____

Signature Date

Tab X

Current Rule:

RULE 78. PETITION: ORIGINAL AND SUPPLEMENTAL; INDORSEMENT

The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed.

RULE 78a. CASE INFORMATION SHEET

(a) *Requirement*. A civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of:
   (1) an original petition or application; and
   (2) a post-judgment petition for modification or motion for enforcement in a case arising under the Family Code.

(b) *Signature*. The civil case information sheet must be signed by the attorney for the party filing the pleading or by the party.

(c) *Enforcement*. The court and clerk must take appropriate measures to enforce this rule. But the clerk may not reject a pleading because the pleading is not accompanied by a civil case information sheet.

(d) *Limitation on Use*. The civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right.

(e) *Applicability*. The civil case information sheet is not required in cases filed in justice courts or small-claims courts, or in cases arising under Title 3 of the Family Code.

Comment: Rule 78a is added to require the submission of a civil case information sheet to collect data for statistical and administrative purposes, *see, e.g.*, TEX. GOV'T CODE § 71.035. A civil case information sheet is not a pleading. Rule 78a is placed with other rules regarding pleadings because civil case information sheets must accompany pleadings.

Proposed Rule:

RULE 78. PETITION: ORIGINAL AND SUPPLEMENTAL; INDORSEMENT

The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed.

RULE 78a. DISCLOSURE SHEET FOR PROTECTIVE ORDERS ~~CASE INFORMATION SHEET~~

(a) *Requirement*.

(1) A disclosure sheet for protective orders, in the form promulgated by the Supreme Court of Texas, must accompany the filing of any protective order filed under the Texas Family Code or the Texas Code of Criminal Procedure.

~~A civil case information sheet, in the form promulgated by the Supreme Court of Texas, must accompany the filing of:~~

~~(1)an original petition or application; and~~

~~(2)a post-judgment petition for modification or motion for enforcement in a case arising under the Family Code.~~

(b) *Signature*. The disclosure sheet for protective orders ~~civil case information sheet~~ must be signed by the attorney for the party filing the pleading or by the party.

(c) *Enforcement*. The court and clerk must take appropriate measures to enforce this rule. But the clerk may not reject a pleading because the pleading is not accompanied by a disclosure sheet for protective orders. ~~civil case information sheet.~~

(d) *Limitation on Use*. ~~The civil case information sheet is for data collection for statistical and administrative purposes and does not affect any substantive right~~ The disclosure sheet for protective orders is for use by the judiciary for informational purposes in protective orders.

~~(e) *Applicability*. The civil case information sheet is not required in cases filed in justice courts or small claims courts, or in cases arising under Title 3 of the Family Code.~~

Comment: The judicial disclosure sheet for protective orders is added to inform judicial officers whether a defendant in a protective order suit has access to weapons. ~~Rule 78a is added to require the submission of a civil case information sheet to collect data for statistical and administrative purposes, *see, e.g.*, TEX. GOV'T CODE § 71.035. A civil case information sheet is not a pleading. Rule 78a is placed with other rules regarding pleadings because civil case information sheets must accompany pleadings.~~

Tab Y

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
California	2016	LE, Family or HH member	Must consider: threats or acts of violence to self or others in past 6 months; violation of a DV PO in effect or within the past 6 months; any conviction for any crime that prohibits purchase and possession of firearms; a pattern of violence acts or threats within the past 12 months. May consider other evidence (prior arrests, reckless use of a firearm or brandishing, history of violating DV POs, recent acquisition of firearms, etc.)	Temporary: 21 days and reasonable cause Yearlong: clear and convincing	Respondent can sell or transfer directly to a licensed firearm dealer; must issue a receipt and filed with the court within 48 hours of being served the order	Statute silent as to searching for the firearms; order states respondent has 24 hours from service of order to relinquish guns and amo to LE (or sell/transfer to licensed dealer).	Crime to knowingly file a false or intentionally harassing petition	Requires surrender to specific LE immediately upon service of the PO or to LE within 24 hours or may sell/transfer to a licensed firearms dealer with receipt and file receipts within 48 hours;	33850 requires an application to CA DOJ to have firearms returned 33865 requires a background check

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Connecticut	1999	2 LE officers or 1 state's attorney	Person poses a risk of imminent injury to self or others; person possesses one or more firearms; firearm is within or upon any place, thing or person	Temporary: 14 days and Probable cause Yearlong: clear and convincing evidence required	29-38c(e) Anytime while a person's firearms are seized, that person may transfer/sell such firearms to any person eligible to possess such firearms by giving written notice to the head of the state agency holding such seized firearms. The agency must deliver such firearms within ten days to the designated transferee	The warrant permits LE to search within a reasonable time the person, place or thing named for any and all firearms and ammunition			Eligible to be retrieved by respondent upon expiration of the order if LE confirms person not otherwise disqualified from possessing a firearm or ammunition

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Delaware	2018	LE, Family or HH member	Poses a significant danger of causing personal injury to self or others in the near future by owning, possessing, controlling, purchasing or receiving a firearm; identify number, types and locations of any firearms	Temporary: 10 to 30 days; Probable cause Yearlong: clear and convincing evidence required	Can surrender firearms directly to a licensed firearms dealer located in DE; dealer must issue a proof of transfer to the court	Must surrender immediately or within 24 hours of personal service; if incarcerated at time of personal service, must surrender within 24 hours of release	Class A misdemeanor to knowingly file a false petition; Court must provide form to respondent to request a termination hearing; Respondent may request one termination hearing and burden on respondent to prove by clear and convincing evidence no longer a danger; None of the court record data is subject to disclosure under FOIA;	Respondent is required to file a document within 48 hours of service, certifying either a) he/she does not own, possess or control any firearms; b) proof of transfer of firearms to LE or licensed dealer; or c) list of firearms owned or possessed that he/she is unable to access and why. If respondent fails to file one of these documents, the court shall order LE to search and seize any identified firearms.	Once an order expires or is terminated, LE or licensed dealer shall dispose of or return firearms to respondent;

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Florida	2018	LE only	Respondent poses a significant danger of causing personal injury to self or others; court can consider (history of suicide, threats of violence, attempts or actual violence; previous convictions; drug abuse; previous gun crimes; recent purchase or attempt to purchase; etc.)	LE must attempt to provide notice to family/HH members at risk; no fee required; Temporary: reasonable cause and 14 days. Yearlong: clear and convincing evidence; order lasts 12 months	Once in the possession of LE, respondent may elect to transfer firearms and amo to another person. LE must allows such a transfer only if: 1) person is eligible to own or possess after confirmation of background check 2)attests to storing such that respondent has no access; 3) attests not to transfer back until ERPO ends	Must surrender immediately ; LE may seek a search warrant from a court to search for firearms if probable cause to believe that there are firearms or ammunition owned which have not been surrendered ; 3rd degree felony to possess after PO;	Court must provide form to respondent to request vacating the order; respondent may request 1 time to vacate the order; petitioner can request extension up to 30 days before expiration; 3rd degree felony to make false statement under oath at hearing on PO; crime to make a false statement under oath	Requires surrender to specific LE immediately upon service of the PO	Weapons back immediately upon expiration of order with request from respondent and a background check; court required to send notice to Petitioner at least 30 days before the order expires notifying respondent of the impending end of the ERPO; LE must provide notice to family or HH members before the return of surrender

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Illinois	2018	LE, Family or HH member If respondent is alleged to pose a danger to an intimate partner, petitioner must make a good faith effort to notify intimate partners of intent to file. LE must refer intimate partners to counseling resources	Respondent poses an immediate and present danger of causing personal injury to self or others by having control or possession of a firearm; Must identify the types and location of any firearms.	Emergency restraining order: 14 days; Probable cause 6 month restraining order: must prove by clear and convincing; Search and seizure warrant issued along with emergency or 6 month order if probable cause respondent possesses firearms	Respondent can petition court to transfer firearms to a person lawfully able to possess them if person does not reside at the same address and swears/provides affidavit that they will not transfer the firearm back to the respondent;	Must surrender firearm owner's identification card and firearms to LE; Search and seizure warrant can be issued along with restraining order	Crime of perjury to file a false petition; Respondent may request one termination hearing and burden on respondent to prove by preponderance of the evidence no longer a danger; court must provide respondent with form to request the hearing. If court denies petition, all records of proceedings are expunged. If court grants petition, all records of proceedings shall be sealed 3 years after expiration of order.	Requires surrender; Search and seizure warrant may be issued; Process for filing firearm restraining orders issued in other states; Class A misdemeanor to knowingly violate the firearms restraining order;	Firearms returned when restraining order is terminated or expires;

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Indiana	2005	LE only	A sworn affidavit describing the facts leading LE to believe an individual is dangerous and in possession of a firearm	Temporary: 14 days; Probable cause Indefinite: must prove by clear and convincing; order lasts indefinitely; Search and seizure warrant issued	Once in LE's possession, respondent may request the court to order LE to sell the firearm(s) at auction and return the proceeds to the individual	Search and seizure warrant issued	Respondent can petition the court for return of the firearm at least 180 days after the court ordered LE to retain the firearms. Individual must prove by a preponderance of the evidence that he/she is not dangerous.	File a return with the court stating when the warrant served and the quantity and identify of any firearms seized;	Only returned if prove by preponderance of evidence that no longer dangerous.

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Maryland	2018	LE, Family or HH member, and certain categories of mental and other health workers	Poses an immediate and present danger to self or others; identify number, types and locations of any firearms	Interim: reasonable grounds and hearing on first or second day on which a district court judge is sitting after issuance of interim order; Temporary: Reasonable grounds and only effective for 7 days; Judge may extend temporary not to exceed 6 months; Yearlong: must prove by clear and convincing; order lasts 12 months; can only proceed to final order hearing if respondent appears, has been served or court has personal jurisdiction over the respondent	If someone other than respondent owns the guns, LE shall return firearms to them provided they agree to prevent respondent from accessing gun	Must surrender. LE may seek a search warrant from a court to search for firearms if have probable cause to believe that there are firearms or ammunition owned which have not been surrendered ;	Interim, temporary or final order should include form advising rights (seek an attorney, grounds asserted, notice of the hearing, etc.); respondent can reschedule the hearing for no later than 30 days after initial hearing; Crime to knowingly file a false or intentionally harassing petition	Requires surrender; court can issue search warrant upon probable cause person failed to surrender or reacquired firearms;	upon expiration of order LE must notify respondent they can request return of firearms and amo; with request from respondent and a background check;

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Massachusetts	2018	LE Family or HH member If family or HH member filing, clerk must provide them with info about: crisis intervention, mental health, substance use disorders, counseling services, and the process to apply for a temp. commitment	Poses a risk of causing bodily injury to self or others by having in the respondent's control, ownership or possession a firearm, rifle, shotgun, machine gun, weapon or ammunition. Must identify the number, types and locations of any firearms or ammo. Must identify whether there is an abuse /harassment prevention order or any pending lawsuits between the parties.	Emergency: 10 days and reasonable cause Yearlong: preponderance of the evidence Hearing is held sooner (within 2 days) if petition includes an affidavit that respondent is required to carry a firearm for employment	Respondent can sell or transfer title to a licensed dealer and upon written proof of sale or transfer, LE may transfer possession to dealer. Respondent may not take possession, though.	Immediately surrender firearms and license/ID card to carry. Municipal licensing authority shall immediately suspend their license to carry. LE must provide respondent with info about: crisis intervention, mental health, substance use disorders, counseling services, list of interpreters	Crime to knowingly file a false or intentionally harassing petition. Court may modify, suspend, or terminate its order at any time upon motion by either party (provided there is due notice of motion and hearing). Confidential portions of the court record shall not be deemed to be "public records"	Requires surrender immediately upon service of the PO. Shall issue respondent a receipt identifying all firearms surrendered and must file copy of receipt with the court within 48 hours of surrender.	Respondent requests return and municipal licensing authority confirms that respondent is suitable under federal and state law for return. LE must notify the petitioner not less than 7 days prior to expiration of ERPO and return of license to carry and firearms.

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
New Jersey	2018	Any person	Person poses a significant risk of personal injury to himself or others by possessing a firearm; Affidavit naming or describing with reasonable specificity facts to justify a firearm seizure warrant and listing any firearms to be seized may also be filed;	Gun violence restraining ex parte order: 14 days and probable cause Yearlong order: by clear and convincing evidence Firearm seizure warrant issued along with order if probable cause respondent possesses firearms	If someone other than respondent owns the firearms, the firearms shall be returned to the lawful owner	Firearms are taken pursuant to firearm seizure warrant	Respondent may submit one written request for a hearing to permit the respondent to possess firearms; LE must provide respondent with a form to request such a hearing when serving the order;	When LE take firearms pursuant to warrant officer shall give a receipt for the property taken or leave the receipt where the firearms were found; Firearms delivered to the county prosecutor; Crime to knowingly violate the gun violence restraining order;	Silent as to process for returning firearms to the respondent

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Oregon	2017	LE Family or HH member	Presents a risk in the near future to self or others; factors court can consider (history of suicide, threats of violence, attempts or actual violence; previous convictions; drug abuse; previous gun crimes; recent purchase or attempt to purchase; etc.)	Clear and convincing evidence; respondent has 30 days to request a hearing to contest the *ex parte* order; if requested, the hearing must be held in 21 days; no fee required Both parties can request extension or termination of order once within 12 months; hearing required and person requesting has burden of proof	Respondent can surrender firearms directly to LE, gun dealer, or a third party who can lawfully possess; If guns owned by someone else, LE must give guns to that person, but requires person to prevent respondent from gaining access	order states respondent has 24 hours from service of order to relinquish guns and amo to LE (or sell/transfer to licensed dealer). Continuing to possess is a Class A misdemeanor.	Crime to knowingly file a false or intentionally harassing petition	The order states place to surrender guns/ammunition; if owned by someone else, LE must give guns to the owner who is required to prevent the person from gaining access	Must be returned upon expiration of order upon request and after background check

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Rhode Island	2018	LE only Sworn affidavit for a search warrant is concurrently filed by LE for the search of any firearms in the possession, custody, or control of the respondent	Petition must allege the respondent poses a significant danger of causing imminent personal injury to self or others by having in their custody or control, or by purchasing, possessing, or receiving a firearm. The petition must state the facts supporting the allegation and any firearms believed to be in respondent's possession. At the time of filing, must identify all known restraining orders, orders of protection, and pending lawsuits involving the respondent.	Temporary: 14 days and probable cause Yearlong: clear and convincing evidence required During the hearing, court my consider whether a mental health evaluation or substance abuse evaluation is appropriate and may recommend respondent seek one;	LE can transfer firearms to a federally licensed dealer upon written request by respondent. Dealer can sell or transfer firearms, upon request to a qualified named individual who is not a member of the person's dwelling house or prohibited from possessing firearms. Felony for that person to transfer or return firearm to respondent.	A concurrently authorized search warrant may be issued by the court; order states if any firearms have not already been seized by LE, must immediately contact LE to arrange for the surrender of any other firearms in custody or control	Felony to knowingly file a false or intentionally harassing petition; Court must provide form to respondent to request a termination hearing; Respondent may request one termination hearing and burden on respondent to prove by clear and convincing evidence no longer a danger;	With temporary order and probable cause, court can issue search warrant for firearms;	Respondent requests return by showing court document of expiration or termination. LE must conduct a national criminal records check before returning firearms. Court must schedule a review hearing 30 days before yearlong order expires; Petitioner required to send notice of impending expiration to family or HH members within 14 days of expiration of the ERPO;

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Vermont	2018	State's Attorney or Office of the Attorney General only	affidavit must allege the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon. The affidavit must state the facts supporting the allegation and any dangerous weapon believed to be in respondent's possession.	Temporary: Preponderance of the evidence; Hearing on final order held within 14 days of issuance of ex parte order; 6 month Final Order: clear and convincing evidence; state must petition for extensions 14-30 days before each 6 month period expires. Respondent may also petition for return of firearms once during each ERPO period and state must prove that the respondent still represents an extreme risk;	Can surrender firearms directly to a licensed firearms dealer or a third party; third party must execute an affidavit they are subject to civil contempt if allow respondent to have access	Statute silent as to searching for firearms; Statute says that the respondent shall "immediatel y relinquish the dangerous weapon." to LE.	Crime to knowingly file a false or intentionally harassing petition; Respondent may also petition for return of firearms once during each ERPO period and state must prove that the respondent still represents an extreme risk; State carries the burden of proof at all stages**.**	Violation of the order can result in imprisonment of up to one year and fine of up to $1,000.	Each ERPO issued by the court shall direct the agency or person "in possession of a firearm… to release it to the owner upon expiration of the order." if failed to be retrieved within 90 days of court order releasing it, firearms can be sold;

State	When passed	Who can file	Evidence required	Length of Order and Standard of Proof	Sell or Transfer firearms?	Surrender	Procedural safeguards	Process for enforcement	Return of Firearms
Washington	2016	LE, Family or HH member	Identify number, types and locations of any firearms	Temporary: Ex parte order lasts 14 days; reasonable cause Yearlong: Preponderance of the evidence	If someone other than respondent owns the guns, LE shall return firearms to them provided they agree to prevent respondent from accessing gun	Surrender within 48 hours; LE may seek a search warrant from a court to search for firearms if probable cause to believe that there are firearms or ammunition owned which have not been surrendered	crime to knowingly file a false or intentionally harassing petition		Requires a background check before returning and confirmation from the court the ERPO has terminated or expired without renewal; must provide notice to family or HH member if requested;

Tab Z

MEMORANDUM

TO: Texas Supreme Court Advisory Committee (SCAC)
FROM: Judicial Administration Subcommittee
RE: Local Rules Agenda Item—for the SCAC Meeting on September 28-29, 2018
DATE: September 24, 2018

In a referral letter dated July 5, 2017, Chief Justice Hecht asked the SCAC to consider issues relating to local rules. Specifically, he noted that Rule of Civil Procedure 3a and Rule of Judicial Administration 10 require the Supreme Court of Texas to approve any new or amended local rule of a trial court and asked the SCAC to propose a new process and corresponding rule amendments that remove the primary responsibility for approving the local rules of trial courts from the Supreme Court of Texas. He encouraged consideration of the following things:

- whether statewide rules should define what must be in a local rule, rather than a standing order;
- whether the regional presiding judge, the regional court of appeals, or both should be required to approve local rules of trial courts and whether the process should be different for rules that only apply to criminal cases;
- whether trial courts should be able to adopt certain kinds of rules without prior approval of a supervising court; and
- a process for Supreme Court review of a proposed or enacted local rule at the request of any person.

The local-rules project was assigned to the Judicial Administration Subcommittee, and the Court's former Rules Attorney Martha Newton prepared a memorandum to facilitate the subcommittee's work. The subcommittee met telephonically twice and discussed, among other things, Martha's memorandum, the considerations set forth above, the standards governing local rules, and potential rule amendments to address issues with current procedures and practices. The Court of Criminal Appeals' Rules Attorney, Holly Taylor, participated in the second call. The subcommittee then prepared a memorandum for the SCAC's consideration on July 13, 2018.

The SCAC discussed issues pertaining to local rules during its meeting on July 13, 2018. No votes occurred in regard to local rules during that meeting, but several ideas were discussed, including the following: (1) whether an entity should be formed to assist the Supreme Court with reviewing proposed local rules and, if so, whether that entity should be appointed by the Supreme Court or the State Bar of Texas; (2) whether, when, and how local rules and standing orders should be reviewed; (3) whether local-rules templates should be prepared and, if so, what they should address; (4) whether and how to address formally the Court of Criminal Appeals' role in relation to local rules; and (5) how to publicize local rules and standing orders.

The proposed rule amendments below are a product of the SCAC's discussion and of the subcommittee's further consideration of issues and options during telephonic meetings on September 6, 2018 and September 20, 2018. Of note, there are some areas of disagreement among members of the subcommittee. The subcommittee members will address those areas of

disagreement during the upcoming SCAC meeting. To facilitate the SCAC's discussion of the proposals below, the following documents are attached to this memorandum: (1) Martha Newton's memorandum (Exhibit A); (2) Tex. R. Civ. P. 3a (Exhibit B); (3) Tex. R. Jud. Admin. 10 (Exhibit C); (4) Tex. Gov't Code § 74.093 (Exhibit D); (4) Tex. R. App. P. 1.2 (Exhibit E); and (5) 28 U.S.C. §§ 2071–72 (Exhibit F).

PROPOSED RULE AMENDMENTS

Texas Rule of Civil Procedure 3a

Rule 3a. Local Rules and Standing Orders

Each administrative judicial region, district court, county court, county court at law, and probate court may ~~make~~adopt and amend local rules and standing orders governing practice before such courts, provided that the local rules and standing orders comply fully with the requirements of Rule 10 of the Texas Rules of Judicial Administration.~~:~~

~~(1) that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located;~~

~~(2) no time period provided by these rules may be altered by local rules;~~

~~(3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;~~

~~(4) any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;~~

~~(5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to the members of the bar;~~

~~(6) n~~No local rule or~~,~~ standing order~~, or practice~~ of any court~~,~~ ~~—~~other than those ~~local rules and amendments~~local rules and standing orders that ~~which~~ fully comply with all requirements of ~~this Rule 3a,~~ Rule of Judicial Administration 10~~—~~shall ever be applied to determine the merits of any matter.

Texas Rule of Judicial Administration 10

Rule 10. Local Rules and Standing Orders

(a) *Relationship with Other Authorities*. The local rules and standing orders adopted or amended by the administrative judicial regions and the courts of each county in this state must not duplicate or be inconsistent with ~~shall conform to all~~any provisions of the federal or Texas constitution, Texas statutes, ~~or~~ or statewide ~~and administrative region~~ rules in Texas. This

requirement extends to, but is not limited to, any time periods provided by a constitutional provision, statute, or statewide rule.

~~If approved by the Supreme Court pursuant to Rule 3a, T.R.C.P., the local rules shall be published and available to the Bar and public, and shall include the following:~~

(b) *Multi-Court Counties*. ~~a.~~ In multi-court counties having two or more court divisions, each division must adopt a single set of local rules which shall govern all courts in the division.

(c) *Local Rule Content.* Each set of local rules in this state must:

(1) be consistent with any applicable template issued by the Supreme Court of Texas;

(2) for each rule, identify any provision in the Texas Rules of Civil Procedure or Code of Criminal Procedure that addresses the same subject matter as the rule, either through a numbering system that corresponds with the numbering system in the Texas Rules of Civil Procedure or Code of Criminal Procedure or through another, equally apparent method;

(3) include the following:

(i) ~~b.~~ provisions for the fair and equitable distribution of the caseload among the judges in the county;

(ii) ~~c. P~~provisions to ensure uniformity of forms to be used by the courts under Rules 165a and 166, T.R.C.P.;

(iii) ~~d. d~~Designation of the responsibility for emergency and special matters;

(iv) ~~e. P~~plans for judicial vacation, sick leave, attendance at educational programs, and similar matters; and

(v) any other content required by Section 74.093 of the Government Code.[1]

(d) *Local Rule Approval Process.* No local rule will become effective until it is submitted to and approved by the Supreme Court of Texas or its appointed entity, unless the rule addresses only:

(1) standards of decorum;

(2) procedures for handling uncontested matters in civil cases; or

(3) content required by Section 74.093(b) of the Government Code.

The Supreme Court of Texas may request the advice of the Texas Court of Criminal Appeals before approving local rules affecting the administration of criminal justice consistent with Section 74.024 of the Government Code.

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[1] Discussion Point: Should there be a provision requiring proposed amendments to identify any new content that is being proposed in a format that will make the proposed content readily distinguishable from existing rule content, or is it preferable to let the appointed committee decide the format in which proposed amendments must be submitted?

(e) *Publication Requirement.* A proposed local rule shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys and other individuals practicing before the court or courts for which it is made. All local rules must be submitted to the Administrative Director of the Texas Office of Court Administration within ten days of their effective date and made available online and upon request to the members of the bar and public.[2]

(f) *Standing Orders.* A standing order must not contain any content that is mandated under (c)(3) to be included in a local rule, and cannot be enforced in any case unless it has been filed in that case and provided to each party in that case. Before enforcing a standing order in any case, a court or judge may submit that standing order to the Supreme Court of Texas for approval.

(g) *Review Process.* Any person may submit a written request to the Supreme Court of Texas for review of any local rule or standing order [that has not been approved by the Supreme Court of Texas].[3] If such local rule or standing order is in effect when the request for review is submitted, it will remain in effect unless and until it is modified or abrogated by the Supreme Court of Texas. Any request for review submitted under this rule must specify the local rule or standing order at issue and detail each concern relating to each specified rule or order. A request for review may be submitted through a State Bar of Texas representative.

[2] Discussion Point: Should the Office of Court Administration (OCA) be the receiving entity, or does it make more sense for the Supreme Court of Texas to receive local rules and then deliver them to OCA for publication online?

[3] Discussion Point: Should the review process be available for all local rules and standing orders, or only those local rules and standing orders that have not been approved previously by the Supreme Court of Texas?

EXHIBIT A

To: The Judicial Administration Subcommittee of SCAC Oct. 23, 2017
From: Martha Newton
Re: Problems With the Existing Local Rules Approval Process

Here are my observations on the local rules approval process. Of course, they do not necessarily reflect the views of the Supreme Court or any of its Members.

Introduction

Professor Charles Alan Wright in his first treatises on federal practice and procedure recognized that the proliferation of local rules and practices threatened the integrity of the federal rules—and that was in 1965! But his warnings, though not unheeded, could not stop the process then and cannot roll it back now because two fundamental principles of rulemaking are in tension. On the one hand, uniformity is always and everywhere to be prized—up and down the halls of the federal courthouse, and from district to district. Knowing that the rules will be the same in the District of New Mexico and the Southern District of New York assures efficiency, builds trust and confidence, and, well, promotes justice. On the other hand, the evolution of society and of its expectations of the justice system demands innovation. E-filing and other technologies don't just assist the system; they change it fundamentally. Innovation often comes through individual experimentation, but to prevent this from disadvantaging those who do not usually practice in a particular court, new or different practices or procedures can't be the secret trove of the local bar. They should be available to all—in local rules. In time, Professor Wright was correct: uniformity must not stifle innovation, but it must assimilate it. The two competitors must work together.

The Texas Rules of Civil Procedure, first adopted in 1941, have always authorized trial courts to make local rules of practice. Since 1983, when former TRCP 817 became TRCP 3a, the rules have required that any proposed rule or amendment be submitted to SCOTX for approval before it becomes effective. *See* TEX. R. CIV. P. 3a(3) (current version); *id.* R. 3a (version adopted by order dated Dec. 5, 1983). The Rules of Judicial Administration, adopted in 1987, have required that local rules for district and statutory county courts address administrative issues such as the amount of vacation time and sick leave a judge is entitled to, and that

these provisions also be submitted to SCOTX under TRCP 3a. *See* TEX. R. JUD. ADMIN. 10(c).[1] The requirements in TRCP 3a and RJA 10 that every new or amended local rule of practice and administration be submitted to SCOTX for approval have resulted in a system that is unworkable.

Reasons Why the Current System is Unworkable

1. Too Many Trial Courts; Not Enough Manpower

Hundreds of Texas trial courts or groupings of trial courts (*e.g.*, the district courts of X County) have or want local rules. SCOTX has one staff member, the Rules Attorney, to review and present all submissions to the Court, in addition to the many other responsibilities of the position.

The Court must necessarily prioritize its statewide rulemaking projects. Since 2006, the highest number of sets of local rules approved by the Court in a single year was 17 sets in 2012. Most years, 10 or fewer sets are approved. There are typically about 25 sets of local rules pending before the Court at any given time.

The Court cannot approve submitted local rules at a fast-enough pace. This, I emphasize, is not for want of interest or because local rules are not important. The Court simply does not have the resources to move more swiftly. Most local rules are pending in the Court at least a year before they are approved. Some remain pending for several years. The Court will sometimes take up the rules of a larger county out of order because larger counties serve more Texans, so the delay tends to affect smaller, rural counties the most.

2. Delay Begets Delay

Once a set of local rules finally makes it to the top of the pile, the approval process is rarely smooth and efficient. The Court wants the Rules Attorney to

[1] Chapter 74 of the Government Code also requires that each county adopt local rules of administration that address matters enumerated in the statute, but the statute does not expressly require that the rules be approved by SCOTX. *See* TEX. GOV'T CODE § 74.093.

contact the sponsoring judge(s) to resolve any concerns before presenting the rules to the Court. Often, a sponsoring judge is no longer on the bench, amendments to the TRCP made in the interim render a proposed local rule or amendment outdated or invalid, or the submitting court wants to make changes to what was previously submitted. In addition, trial court judges can be hard to reach. For good reasons, direct contact information for a trial court judge is often hard to find, and of course, many are on the bench all day. Some courts never respond to our questions at all.

3. No Guidance on the Content of Local Rules

Trial court judges routinely issue "standing orders" that are never submitted to SCOTX for approval. There is no guidance in TRCP 3a or elsewhere on what kind of court-issued directive must be approved by SCOTX and what kind of directive a court can make on its own in a standing order. As a result, we often open local rules that have been pending in the Court for a long time only to find that the proposed changes relate to minor issues of courtroom or courthouse management—for example, they move the uncontested docket from Monday at 9 a.m. to Tuesday at 9 a.m. or add some basic, noncontroversial rules of courtroom decorum.

On the other end of the spectrum, some trial courts have attempted to impose rules through standing orders that are directly contrary to a rule in the TRCP. For example, we recently received local rules issued years ago as administrative orders, one exempting certain civil cases from the e-filing mandate in TRCP 21(f)(1), and another automatically sealing all documents filed in guardianship cases, despite the requirements of TRCP 76a.

Sometimes we have the opposite problem—a lower court has incorporated provisions of the TRCP or other statewide rules into its local rules. But when the TRCP or statewide rules change, the local rules become outdated.

4. No Recourse When Trial Courts Enforce Local Rules Without SCOTX Approval

We are frequently informed that other courts are enforcing local rules and procedures without SCOTX approval. Another Texas county has displayed on the district clerk's website: (1) local rules for the district courts of the county that were

submitted to the Court but have not been approved because the local administrative judge has not responded to our questions about a specific rule; and (2) local rules for a particular district court in the county, never submitted to the Court, that require counsel to provide the judge with courtesy paper copies of pleadings and other documents.[2]

When a lower court enforces a local rule without SCOTX approval, court patrons do not have much recourse. The Court occasionally asks the Rules Attorney to call the lower court to express the Court's disapproval, but there is no mechanism in the TRCP for the Court to abrogate a local rule. When the Court declines to approve a local rule, it does not issue an order; we just communicate the Court's disapproval by phone or in writing.

5. Lack of Expertise on Criminal Rules

Proposed local rules often contain rules specific to criminal cases. The Court of Criminal Appeals does not have statutory authority to approve local rules, so SCOTX is often in the position of having to approve local rules on which the Court has no expertise. The Court has taken varied approaches to dealing with criminal rules over the years.

At some time in the past, the Court refused to approve any local rules for criminal cases at all. The Court's policy later shifted to approving criminal rules that were "procedural only," but that approach proved unworkable—procedural rules can have profound due process implications in criminal cases. More recently, I have begun conferring with the CCA's rules attorney, Holly Taylor, on proposed local rules for criminal cases. This approach is better than any existing alternative, but it is inefficient for SCOTX to serve as an intermediary between a lower court and the

[2] TRCP 21(f)(9) states: "Unless required by local rule, a party need not file a paper copy of an electronically filed document." When Rule 21 was amended to mandate e-filing in 2014, the Court was undecided whether to authorize lower courts to require the filing of courtesy paper copies. Paragraph (f)(9) enabled the Court to defer making a decision because any local rule requiring paper copies would have to be approved by the Court under Rule 3a. Since then, the Court has firmly settled on the side of no paper and rejected every local rule requiring paper that has been submitted for Court approval.

CCA. Additionally, the CCA has the busiest docket of any court in the country, and thus probably has even less time to devote to policing local rules than SCOTX has.

Some Ideas for an Improved System

The Court desires SCAC's independent advice on how to improve local rules. But here are some possible features of a new system:

- authorizing trial courts to adopt certain kinds of rules (whether called rules or standing orders) without getting approval from any higher court;

- requiring trial courts to choose from different versions of particular rules (this is sometimes done in the federal circuits)

- requiring that other proposed rules be approved by the court of appeals;

- prohibiting a local rule's either duplicating or making an exception to a rule in the TRCP;

- assuring that local rules for criminal cases will be approved by a judge or court with sufficient expertise;

- providing recourse for a court patron who believes that a local rule is being enforced without the requisite approval or that a local rule is improper under a rule or policy of statewide applicability; and

- requiring uniform publication and availability of all local rules in a central database on the Texas Judiciary's website.

EXHIBIT B

Texas Rule of Civil Procedure 3a

Rule 3a. Local Rules

Each administrative judicial region, district court, county court, county court at law, and probate court may make and amend local rules governing practice before such courts, provided:

(1) that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located;

(2) no time period provided by these rules may be altered by local rules;

(3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;

(4) any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;

(5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to the members of the bar;

(6) no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a, shall ever be applied to determine the merits of any matter.

EXHIBIT C

Texas Rule of Judicial Administration 10

Rule 10. Local Rules

The local rules adopted by the courts of each county shall conform to all provisions of state and administrative region rules. If approved by the Supreme Court pursuant to Rule 3a, T.R.C.P., the local rules shall be published and available to the Bar and public, and shall include the following:

a. In multi-court counties having two or more court divisions, each division must adopt a single set of local rules which shall govern all courts in the division.

b. Provisions for fair distribution of the caseload among the judges in the county.

c. Provisions to ensure uniformity of forms to be used by the courts under Rules 165a and 166, T.R.C.P.

d. Designation of the responsibility for emergency and special matters.

e. Plans for judicial vacation, sick leave, attendance at educational programs, and similar matters.

EXHIBIT D

Texas Government Code § 74.093

§ 74.093. Rules of Administration

(a) The district and statutory county court judges in each county shall, by majority vote, adopt local rules of administration.

(b) The rules must provide for:

(1) assignment, docketing, transfer, and hearing of all cases, subject to jurisdictional limitations of the district courts and statutory county courts;

(2) designation of court divisions or branches responsible for certain matters;

(3) holding court at least once a week in the county unless in the opinion of the local administrative judge sessions at other intervals will result in more efficient court administration;

(4) fair and equitable division of caseloads; and

(5) plans for judicial vacation, sick leave, attendance at educational programs, and similar matters.

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

(c-1) The rules may provide for the establishment and maintenance of the lists required by Section 37.003, including the establishment and maintenance of more than one of a list required by that section that is categorized by the type of case, such as family law or probate law, and the person's qualifications.

(d) Rules relating to the transfer of cases or proceedings shall not allow the transfer of cases from one court to another unless the cases are within the jurisdiction of the court to which it is transferred. When a case is transferred from one court to another as provided under this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

EXHIBIT E

Texas Rule of Appellate Procedure 1.2

Rule 1.2. Local Rules

(a) *Promulgation.* A court of appeals may promulgate rules governing its practice that are not inconsistent with these rules. Local rules governing civil cases must first be approved by the Supreme Court. Local rules governing criminal cases must first be approved by the Court of Criminal Appeals.

(b) *Copies.* The clerk must provide a copy of the court's local rules to anyone who requests it.

(c) *Party's Noncompliance.* A court must not dismiss an appeal for noncompliance with a local rule without giving the noncomplying party notice and a reasonable opportunity to cure the noncompliance.

EXHIBIT F

28 U.S.C. §§ 2071–72

§ 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.
(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Tab AA

Walker, Marti

From: Tracy Christopher <Tracy.Christopher@txcourts.gov>
Sent: Thursday, July 12, 2018 10:29 AM
To: Walker, Marti; aalbright@adjtlaw.com; 'adawson@beckredden.com'; Babcock, Chip; 'brett.busby@txcourts.gov'; 'd.b.jackson@att.net'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercscd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'harvey.brown@txcourts.gov'; Bob Pemberton; 'jane.bland@txcourts.gov'; 'jperduejr@perdueandkidd.com'; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley'; 'lisa@kuhnhobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'pkelly@texasappeals.com'; 'psbaron@baroncounsel.com'; 'pschenkkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'rhwallace@tarrantcounty.com'; 'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'shanna.dawson@txcourts.gov'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'coliden@lockelord.com'; Jeffrey S. Boyd; 'Elaine Carlson; bludworthk@gtlaw.com; watsons@gtlaw.com; 'Viator, Mary; 'bill.boyce@txcourts.gov'; Sharon Tabbert (Assistant to B. Dorsaneo; judgebillboyce@gmail.com; Dee Dee Jones; Lisa Verm; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; David Newell; Holly Taylor; Mike.Hatchell@haynesboone.com; Shirley@namanhowell.com; kent.sullivan@outlook.com; kimberly.phillips@shell.com; Jaclyn Daumerie; dpeeples36 @yahoo.com
Subject: RE: SCAC-July 13, 2018 Meeting AGENDA (Email 1 of 2)

I apologize for being unable to make the meeting this Friday. I write to note my opposition to the change to TRCP 3(a)(1). Harris County Civil District Courts have had a local rule for almost 30 years requiring 10 days notice for a hearing and establishing a submission docket for motions in addition to an oral hearing docket. This is a *modification* of the rules and would be impermissible under the new rule. This local rule has been very effective for case management in Harris County. Returning to oral hearings on all matters would be not be cost effective for the lawyers, the parties and the judicial system.
There are other local rules that work well in a particular jurisdiction, that do modify the TRCP. We should not eliminate the ability to have substantive local rules that enhance case management and do not impair rights.
Sincerely,
Tracy Christopher

From: Walker, Marti [mailto:mawalker@jw.com]
Sent: Thursday, July 12, 2018 9:49 AM
To: aalbright@adjtlaw.com; 'adawson@beckredden.com'; Babcock, Chip; 'brett.busby@txcourts.gov'; 'd.b.jackson@att.net'; 'ecarlson@stcl.edu'; 'errodriguez@atlashall.com'; 'esteveza@pottercscd.org'; 'evan.young@bakerbotts.com'; 'evansdavidl@msn.com'; 'fgilstrap@hillgilstrap.com'; 'fuller@namanhowell.com'; 'harvey.brown@txcourts.gov'; Bob Pemberton; 'jane.bland@txcourts.gov'; 'jperduejr@perdueandkidd.com'; 'kvoth@obt.com'; 'LJefferson@JeffersonCano.com'; 'lbenton@levibenton.com'; 'lhoffman@central.uh.edu'; 'Linda Riley'; 'lisa@kuhnhobbs.com'; 'martha.newton@txcourts.gov'; 'mgreer@adjtlaw.com'; 'nathan.hecht@txcourts.gov'; 'nina.cortell@haynesboone.com'; 'pkelly@texasappeals.com'; 'psbaron@baroncounsel.com'; 'pschenkkan@gdhm.com'; 'rhardin@rustyhardin.com'; 'rhughes@adamsgraham.com'; 'rhwallace@tarrantcounty.com';

'richard@ondafamilylaw.com'; 'rmeadows@kslaw.com'; 'rmun@scotthulse.com'; 'robert.l.levy@exxonmobil.com'; 'shanna.dawson@txcourts.gov'; 'stephen.yelenosky@co.travis.tx.us'; 'tom.gray@txcourts.gov'; 'tracy.christopher@txcourts.gov'; 'triney@rineymayfield.com'; 'wdorsane@mail.smu.edu'; 'coliden@lockelord.com'; Jeffrey S. Boyd; 'Elaine Carlson; bludworthk@gtlaw.com; watsons@gtlaw.com; 'Viator, Mary; 'bill.boyce@txcourts.gov'; Sharon Tabbert (Assistant to B. Dorsaneo; judgebillboyce@gmail.com; Dee Dee Jones; Lisa Verm; kwooten@scottdoug.com; arodriguez@hillgilstrap.com; scott@appellatehub.com; David Newell; Holly Taylor; Mike.Hatchell@haynesboone.com; Shirley@namanhowell.com; kent.sullivan@outlook.com; kimberly.phillips@shell.com; Jaclyn Daumerie; dpeeples36@yahoo.com
Subject: SCAC-July 13, 2018 Meeting AGENDA (Email 1 of 2)

To SCAC:
Please find attached the following:

- July 13, 2018 AGENDA
- Tab A
- Tab D
- Tab E

Note: Please leave a placeholder for items (b) and (c) on the agenda, as soon as I receive them I will forward.

REMINDER: The meeting location is the State Bar.

Safe Travels,

Marti Walker | Legal Administrative Assistant to:
Charles L. Babcock
Harris Huguenard
1401 McKinney Suite 1900 | Houston, TX | 77010
V: (713) 752-4375 | mawalker@jw.com

JW | Jackson Walker LLP

Tab BB

BELL COUNTY DISTRICT COURT LOCAL RULES

TITLE 1. RULES GOVERNING ALL PROCEEDINGS

RULE 1.1. CONDUCT AND COURTROOM DECORUM

a. Policy

Judges and attorneys have a duty to uphold the highest standards of conduct and to earn and promote public respect for the judiciary, the legal profession and the American system of justice.

b. The Texas Lawyer's Creed

The Standards of Professional Conduct in Section IV of The Texas Lawyer's Creed, as promulgated by the Texas Supreme Court and the Texas Court of Criminal Appeals are adopted and incorporated herein by reference as guidelines for participating in litigation in the District Courts of Bell County, Texas.

c. Conduct Required of Counsel

1. Counsel shall timely appear before the court at each setting and following each recess.
2. Counsel shall be appropriately attired for all court proceedings.

   Male attorneys shall be dressed neatly in business suits or sportcoats, with slacks, dress shirt and tie. The shirt collar shall be buttoned. Blue jeans, sportswear and similar clothing are not considered appropriate courtroom attire.

   Female attorneys shall be dressed in conservative dress or business attire. Blue jeans, sportswear and similar clothing are not considered appropriate courtroom attire.

3. Counsel shall rise and remain standing while addressing the Court, unless otherwise instructed.
4. Counsel shall address all statements, requests, and objections to the Court and not to opposing counsel.
5. Counsel shall not argue objections in the presence of the jury without prior leave of court.
6. Counsel shall not interrupt or talk over opposing counsel, except to state formal objections.

7. Counsel shall remain behind counsel table while examining witnesses, except with leave of court. If requested by counsel, counsel may stand at a podium while examining witnesses.
8. Counsel shall neither make nor insinuate derogatory or insulting remarks about opposing counsel.
9. Counsel shall address the Court as "Your Honor" or "Judge" and except with leave of court, shall refer to all counsel, parties and witnesses (except children) by their surnames, using such titles as Mr., Mrs., Miss, Ms., Dr., etc., as appropriate, and not by first names or nicknames, or any discriminatory or inappropriate classification.
10. Counsel shall request leave of court before approaching the bench or to approach the witness when necessary to work with documentary or tangible evidence.
11. Counsel shall not lean on the bench except as may be necessary to prevent jurors from overhearing bench conferences. Counsel shall not engage in personal discussions with the Court or each other during trial while in the presence of jurors, parties, or witnesses.
12. Counsel shall not use profanity in the courtroom.
13. Counsel shall advise counsel's clients, witnesses and others subject to counsel's control of these rules of conduct and courtroom decorum.

d. Conduct Required of All Persons

All persons in the courtroom during trials and other proceedings shall be attentive to the proceedings and shall refrain from any action which may disrupt the proceedings.
Therefore, all persons shall comply with the following:

1. All persons shall be appropriately attired for court proceedings.

   All persons entering the courtroom shall be dressed in clothing reasonably befitting the dignity and solemnity of court proceedings. Tank tops, T-shirts, shorts, flip flops, and clothing that is tattered or soiled are among those items of clothing not considered appropriate courtroom attire. No hats, caps, sunglasses, or telephone ear-pieces shall be worn in the courtroom without prior approval.

2. No tobacco use in any form is permitted.
3. No bottles, beverage containers, paper cups or edibles are allowed in the courtroom, except as permitted by the Court.
4. No gum chewing is permitted.
5. No propping feet on tables or chairs is permitted.
6. No talking or unnecessary noise is permitted which interferes with the court proceeding.

7. No person may, by facial expression, shaking or nodding of the head, or by any other conduct, express approval or disapproval of any testimony, statement or transaction in the courtroom.
8. All persons shall rise when the judge enters the courtroom, and at such other times as the bailiff shall instruct.
9. No person shall bring packages, suitcases, boxes, duffel bags, shopping bags or containers into the courtroom without the prior approval of the bailiff.
10. No person shall be permitted any verbal or physical contact with a prisoner without the prior approval of the bailiff.

e. Enforcement

The bailiff of the court shall enforce the rules of conduct and courtroom decorum.

RULE 1.2. REQUESTS FOR CONTINUANCE OR POSTPONEMENT

a. Consent or Notice Required

No request for a continuance, to pass, postpone or reset any trial, pretrial, or other hearing shall be granted unless the Court and counsel for all parties consent, or unless all parties not joining in such request have been notified and have had an opportunity to object.

b. Contents of Motion

Unless counsel for all parties consent in writing to the request for a continuance and the same is approved by the Court, a motion must be filed pursuant to Rule 251, et seq. of the Texas Rules of Civil Procedure, as amended or Article 29.01, Texas Code of Criminal Procedure, as applicable, and the motion must be accompanied by an order setting the motion for a hearing. Any motion that does not meet these requirements will be denied without prejudice to the right to refile.

RULE 1.3. CONFLICT IN TRIAL SETTINGS

a. Duty of Counsel to Notify Court

Whenever an attorney has two or more cases on trial dockets for trial at the same time, it shall be the duty of the attorney to bring the matter to the attention of the courts concerned immediately upon learning of the conflicting settings.

b. Priority of Cases In Event of Conflict

Insofar as practicable, the affected courts shall attempt to agree upon which case shall have priority. Absent such agreement, conflicting trial settings shall be resolved in the following priority:

1. Federal cases
2. Cases given statutory preference
3. Criminal Cases against defendants who are detained in jail pending trial
4. Temporary injunctions
5. Preferentially set cases
6. The earliest set case

TITLE 2. RULES GOVERNING CIVIL PROCEEDINGS

RULE 2.1. APPLICATION FOR EX PARTE ORDERS

By presenting any application for an ex parte order, counsel is deemed to represent to the Court that:

a. to the best of counsel's knowledge, the party against whom the relief is sought is not represented by counsel; or

b. if the party against whom the relief is sought is represented by counsel, that (i) such counsel has been notified of the application and does not wish to be heard by the Court thereon; or (ii) counsel presenting the application has diligently attempted to notify opposing counsel, has been unable to do so, and the circumstances do not permit additional efforts to give such notice.

RULE 2.2. PRETRIAL AND TRIAL SETTINGS

a. At any time after the filing of an answer or entry of an appearance by the opposing party, any party may request a setting for a trial on the merits or, where applicable, a pretrial hearing, by (i) filing with the Court a motion requesting a hearing, and an order setting the hearing, accompanied by a certificate of service to opposing counsel; or (ii) orally requesting the Court to schedule the hearing and confirming the setting by letter addressed to the Court, a copy of which shall be served on opposing counsel in accordance with Rule 21a of the Texas Rules of Civil Procedure, as amended. All requests for a setting shall include an estimate of the amount of court time required for the hearing.

b. Prior to requesting a setting, counsel shall attempt to coordinate a setting with opposing counsel.

RULE 2.3. WITHDRAWAL OF COUNSEL

a. Withdrawal

Withdrawal of counsel shall be governed by Rule 10 of the Texas Rules of Civil Procedure, as amended, and the following rules.

b. Notice to Client

If another attorney is not to be substituted as attorney for the party or if the party does not consent to the motion to withdraw, the withdrawing attorney shall notify the client in writing that the Court will be requested to sign an order granting the withdrawal on or after ten (10) days following the date of such notice. Notice shall be sent by certified mail, return receipt requested.

c. No Delay of Trial

Unless allowed in the discretion of the Court, no motion to withdraw shall be granted that is presented within thirty (30) days of the trial date or at such time as to require a delay of trial.

RULE 2.4. ALTERNATIVE DISPUTE RESOLUTION

a. Policy

It shall be the policy of the courts of Bell County, Texas to encourage the peaceable resolution of disputes and early settlement of pending civil litigation, excluding family law litigation, expedited cases, and delinquent tax cases, by referral to alternative dispute resolution (ADR) pursuant to the Texas Alternative Dispute Resolution Procedures Act, Texas Civil Practice and Remedies Code, Chapter 154.

b. ADR Mandatory

No trial on the merits shall be conducted in any civil litigation case until all contested issues have been referred to an ADR procedure, ADR has been unsuccessful, or the Court has determined that ADR is inappropriate for the case.

c. Manner of Referral

It is anticipated that the parties shall cooperate in referring such issues to an ADR procedure under terms and conditions as are mutually agreeable, without the need for court intervention. If the parties are unable to cooperate or agree to a referral

of such issues to an ADR procedure, then upon written notification to the Court by one of the parties that efforts to coordinate a referral have been unsuccessful, the Court, without a hearing, shall enter an order of referral to an ADR procedure, and under such terms and conditions selected by the Court.

d. Objection to Referral

If the Court enters an order of referral to an ADR procedure, any party may object to such referral pursuant to Texas Civil Practice and Remedies Code, Chapter 154. Upon the filing of an objection, the Court shall schedule a hearing. If the Court finds that there is a reasonable basis for the objection, the Court may, in its discretion, order that the case not be referred to an ADR procedure and order the case set for trial on the merits.

RULE 2.5. DISMISSAL FOR WANT OF PROSECUTION

a. Procedure

The Court, on its own motion, may dismiss a case for want of prosecution. The procedure provided in Rule 165a of the Texas Rules of Civil Procedure, as amended, shall apply.

b. Reasons For Dismissal

A case may be dismissed for want of prosecution for any of the following reasons:

1. Failure of a party seeking affirmative relief to take appropriate action when the case has been pending without action for six months.
2. Failure of counsel for a party seeking affirmative relief to appear for a pretrial or preliminary hearing, particularly if there has been a previous failure to appear or no motion has been timely filed to meet the exceptions previously sustained.
3. Failure of a party seeking affirmative relief to make an announcement as scheduled when the case has been set for trial.

RULE 2.6. ORDERS AND DECREES

a. Reduction to Writing Within Ninety (90) Days

Within ninety (90) days after rendition, announcement of the Court's ruling, or announcement of settlement by counsel, counsel shall cause all judgments, decrees or orders of any kind to be reduced to writing, forwarded to opposing counsel for approval as to form, and delivered to the Court for signing.

b. Dismissal if Written Order Not Furnished

Upon failure to furnish the Court with a judgment, order or decree disposing of the case within the ninety (90) day period, the Court may place the case on the next regularly scheduled dismissal docket, whereupon the case may be dismissed and costs may be taxed at the Court's discretion.

c. Procedure for Entry of Order

If counsel is unable to secure all opposing counsel's approval as to form, counsel may:

1. File a motion for entry of the proposed judgment, order or decree and secure a hearing for the same, with notice to all opposing counsel pursuant to Rule 21a, Texas Rules of Civil Procedure. At a hearing, the Court may assess costs and attorney's fees within the Court's discretion; or
2. Present the Court with the proposed judgment, decree or order, together with a letter requesting the Court to sign the same if the Court has not received a written objection from opposing counsel within ten (10) days from the date of the letter. Each party who submits a proposed judgment for signature shall serve the proposed judgment and a copy of the letter on all other parties who have appeared and remain in the case, in accordance with Rule 21a, Texas Rules of Civil Procedure. If the Court receives a written objection from opposing counsel within the stated time, the proponent of the judgment, decree or order shall schedule a hearing for entry of the same pursuant to subdivision 1 of this rule.

TITLE 3. RULES GOVERNING TRANSFER OF CASES AMONG COURTS

RULE 3.1. Any judge of a district court in Bell County may act as the judge of any other district court in Bell County without formal order. The authority of this subsection applies to an active or retired judge assigned to a court as provided by law.

RULE 3.2. The transfer of cases between district courts of Bell County may be done by written order upon consent of the judges of those courts participating in the transfer.

RULE 3.3. All transfers not specifically provided for in Title 3 and its subsections shall be made only by the administrative judge of Bell County for the fair and equitable division of case loads. No case shall be transferred by the administrative judge unless the cases transferred are within the jurisdiction of the court to which the cases are transferred.

TITLE 4. TIME STANDARDS

RULE 4.1. TIME STANDARDS FOR CASE DISPOSITION

Pursuant to Article 5, Section 31 of the Texas Constitution, Sections 22.004., 72.002 (2) and 74.024 of the Texas Government Code, Title 3 of the Texas Family Code, Rule 6 of the Rules of Judicial Administration, and Rules [1,3,4 and 5] of the Regional Rules of Judicial Administration, time standards have been established to which reference is made for all purposes, as they now exist, or as they may be hereafter amended.

TITLE 5 LOCAL ADMINISTRATIVE JUDGE

RULE 5.1. POWERS AND DUTIES OF LOCAL ADMINISTRATIVE JUDGE

a. Election of the Administrative Judge.
   1. Pursuant to Section 74.091 of the Texas Government Code a majority of the District Judges will elect a Local Administrative District Judge for a two-year term at the January meeting in 2014 and at the January meeting of each second year thereafter.
   2. The Local Administrative District Judge will have all duties and the responsibility for attending to emergency and special matters of the District Courts pursuant to Rule 9 and 10 (d) Rules of Judicial Administration.

b. Meetings of the Judges of the County.

   1. The Local Administrative District Judge or a majority of the Judges will call meetings of the Judges once each month or as needed.
   2. The Local Administrative District Judge shall preside over such meetings and in his or her absence a temporary Chairman may be elected by a majority of the quorum.

TITLE 6. ADOPTION, AMENDMENT, NOTICE

RULE 6.1. ADOPTION, AMENDMENT, NOTICE

These rules may be amended by majority vote of the District Judges, provided:

a. that any proposed rule or amendment shall not be inconsistent with rules adopted by the Supreme Court of Texas or with any rule of the Administrative Judicial District in which the Court is located; and,

b. any proposed rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas; and

c. any proposed rule or amendment shall not become effective until at least thirty (30) days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made; and,

d. all rules adopted and approved in accordance herewith are made available upon request to members of the Bar and the public.

Adoption

Subject to the approval by the Supreme Court of Texas, these rules shall become effective [redacted] and so long thereafter until amended, repealed or modified by order of the District Courts. All existing Local Rules previously governing the management of the Court dockets that are inconsistent with these rules shall be repealed on the effective date of these rules. Each numbered or lettered paragraph of these rules shall be considered to be separate and distinct from all other portions hereof, and if any portion should be declared by a higher Court to be improper, such declaration will not affect any other portion not so declared to be improper.

The District Clerk is directed to furnish a copy of these rules to the Supreme Court of Texas, pursuant to Rule 3a of the Texas Rules of Civil Procedure, and to record these rules in the Civil Minutes of the 27th, 146th, 169th, 264th and 426th District Courts.

Adopted this the 12 day of Dec., 2013 to become effective on April 1, 2014 or upon approval by the Supreme Court of Texas, whichever is later.

JUDGE JOHN GAUNTT
27th District Court

JUDGE JACK JONES
146th District Court

JUDGE GORDON G. ADAMS
169th District Court

JUDGE MARTHA J. TRUDO
264th District Court

JUDGE FANCY H. JEZEK
426th District Court

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9233

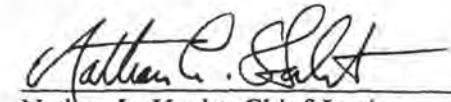
APPROVAL OF AMENDED LOCAL RULES FOR THE DISTRICT COURTS OF BELL COUNTY

ORDERED that:

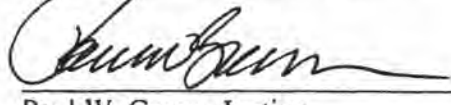
Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following local rules for the District Courts of Bell County.

Dated: November 24, 2014.

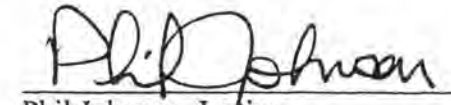
FILED
2014 NOV 24 PM 3:31
SHELIA NORMAN
DISTRICT COURT
BELL COUNTY, TX
Shelia Norman



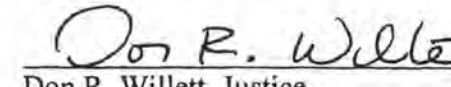
Nathan L. Hecht, Chief Justice



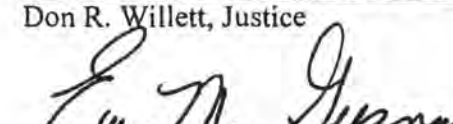
Paul W. Green, Justice



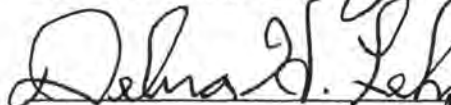
Phil Johnson, Justice



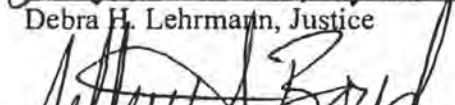
Don R. Willett, Justice



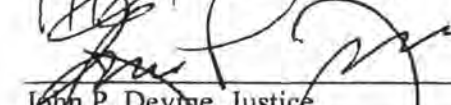
Eva M. Guzman, Justice



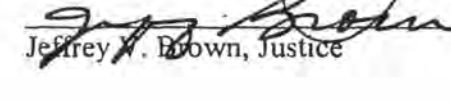
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

IN THE SUPREME COURT OF TEXAS

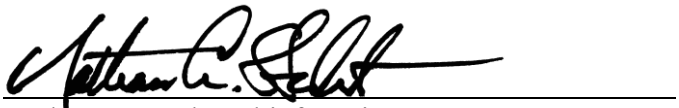
Misc. Docket No. 16-9033

APPROVAL OF LOCAL RULES FOR THE BEXAR COUNTY CIVIL DISTRICT COURTS

ORDERED that:

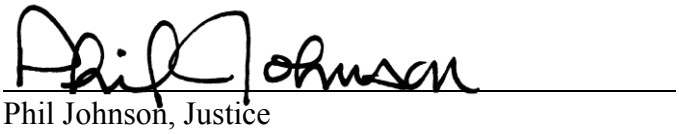
Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following local rules for the Bexar County Civil District Courts.

Dated: March 22, 2016



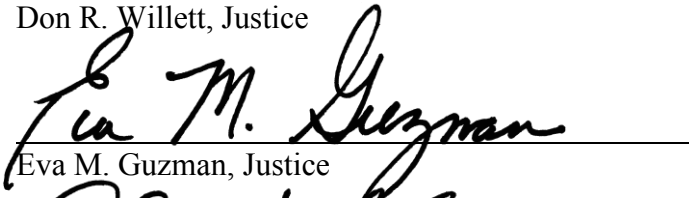
Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

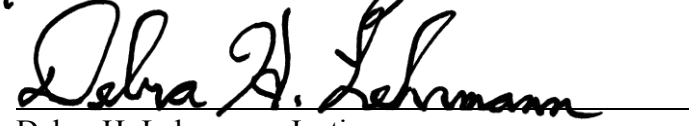


Phil Johnson, Justice

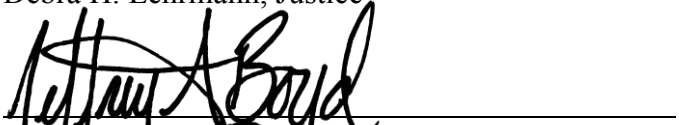
Don R. Willett, Justice



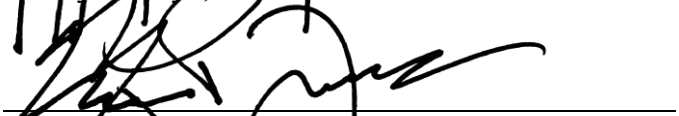
Eva M. Guzman, Justice



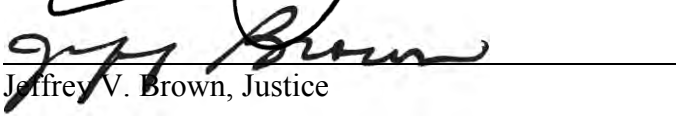
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

PART 3
CIVIL DISTRICT COURT RULES (Revised)

1. Introduction

Every trial and hearing in civil district court is scheduled on one of the following dockets: (a) the Nonjury Docket administered by the Presiding Civil Judge; (b) the Jury Docket administered by the Monitoring Judge and the Jury Assignment Clerk; (c) the ADR docket administered by the ADR coordinator; or (d) another docket established by the Civil District Judges.

2. Allocation of Judges

The civil district judges rotate monthly as Presiding Civil Judge ["Presiding Judge"]. Each week a fixed number of judges, as determined by the Civil District Judges, are assigned to assist the Presiding Judge with the nonjury docket. The other judges are assigned to try jury cases (and nonjury trials of more than two days or as referred by the Presiding Judge). The judges trying jury cases assist the Presiding Judge with nonjury matters from 8:30 to 9:30 and resume their jury trials at 9:30. When the jury docket for the week has been completed, the available judges assist the Presiding Judge for the rest of the week.

3. Nonjury Docket (Presiding Civil District Court)

The Presiding Civil District Court hears all nonjury matters, including pretrial matters in cases set for a jury trial, with the exception of issues allocated to the Monitoring Judge under Rule 4.

A. Each morning, and most afternoons, the Presiding Civil District Judge calls several dockets. Settings on all dockets are handled by the Presiding Civil District Clerk: 210-335-2000.

(1) The 8:30 Docket. The 8:30 docket includes discovery hearings, summary judgments, pleading disputes, and other matters that do not require witnesses.

(2) The 9:00 Docket. The 9:00 docket includes nonjury trials on the merits, temporary orders, injunctions, family law protective orders, special appearances, venue hearings, and other matters that may require significant court time or involve witnesses.

(3) The 10:00 Docket. Each Tuesday, Wednesday, and Thursday, the State's protective order docket is called.

(4) The 2:00 Docket. The tax docket is heard two times each month on Wednesdays. The cost docket is heard the last Thursday of each month. The expunction docket is heard every Thursday.

B. Presiding Court Announcements. When each case is called at docket call, parties shall announce whether they are ready or not ready, whether they want to confer, or whether the matter will be dropped, reset by agreement, or disposed of by agreed order. Parties are also expected to provide an accurate estimate of the amount of court time contested hearings will require including appropriate time for judges to review briefing and authorities. Where time announcements prove to be inaccurate, the Presiding Judge or the Judge to whom the case is assigned shall have the option to confer with the attorneys and parties regarding an accurate announcement and reassign the case for hearing to another court and/or on another day. When no announcement is made, the setting on the matter will be dropped.

C. Multiple Announcements by an Attorney. When an attorney has more than 2 civil, criminal, or other settings either on the Presiding docket or which conflict with settings on the Presiding docket, the Presiding Judge shall have discretion as to how those cases set on the Presiding docket are assigned. Judges will ordinarily, in the exercise of their discretion, give preference to federal settings, criminal settings, and court-ordered special settings. If an attorney has more than 2 settings, the attorney must confer with all counsel on all cases at least two days prior to the date of the settings. The scope of this conference is to notify counsel of the multiple settings, discuss resetting, and to provide opposing counsel with a cell number or other contact information. If an agreement as to how to resolve the conflict cannot be reached, it is the responsibility of the attorneys involved to advise the Presiding Judge of same when the case is called for hearing. The Presiding Judge will then direct the attorneys as to how to proceed. It is the responsibility of the attorney, not the attorney's client, to make announcements in Presiding Court. Failure to comply with this section may result in the settings of the case(s) on the presiding docket being dropped or such other action as the Presiding Judge deems appropriate.

D. Discovery Hearings. When setting a discovery hearing, attorneys and pro se litigants must comply with Rule 191.2, T.R.C.P., which requires a statement that the parties have tried to resolve the discovery dispute by agreement before resorting to court.

E. Computation of Time. Consistent with rules 4, 21, and 21a, T.R.C.P., the courts will not count Saturdays, Sundays, or legal holidays when calculating any three-day notice period, except when the period has been extended because notice was given by mail. In both Presiding Court and in Monitoring Court, the day of filing the notice is not counted and the date of the hearing is counted for the required 3-day notice.

F. Orders

1. *Separate Documents.* Except in the case of motions and orders setting hearings, all orders and judgments must be filed separately from any motion or other document.

2. *Approval Blocks Required.* Unless otherwise ordered by the Court, all orders and judgments presented for a judge's signature must have appropriate signature blocks for the attorney presenting the Order and all other attorneys of record indicating their approval as to form and substance or approval as to form, as appropriate. If a local attorney is presenting an order on behalf of an out-of-county attorney, the order should bear the signature block of the local and out-of-county attorneys. A full signature block consists of the attorney's signature, printed name, mailing address, email address, bar number, telephone number, and fax number.

3. *Agreed Orders.* If the Order deals with a matter that is agreed to by the attorneys of record, the order must bear full signature blocks for all attorneys of record and state "Agreed" or "Agreed as to Form and Substance."

4. *Limited Ruling on Submission.* Bexar County District Judges do not ordinarily rule on submission. A hearing must be set with the Presiding Clerk or an agreed order bearing a full signature block of all attorneys of record may be presented. All default judgments must comply with the Servicemembers' Civil Relief Act, 50 U.S.C. *Appendix,* section 521.

5. *Preparation of Orders.* Unless otherwise ordered by the Court, orders made by the Court must be reduced to writing, presented to the court for entry not later than two weeks from the date of hearing, and must bear the approval blocks for all attorneys of record and self-represented parties. If a proponent of the order is unable to secure the approval of the other attorney/party, a Motion to Enter the Order must be filed and set in the Court which heard the motion. A copy of the Judges' Notes for the hearing at which the Judge rendered the order or a copy of the court reporter's notes for the hearing should accompany all Motions to Enter.

6. *Severance Orders.* Any severance order must state the style of the case and list the names of the plaintiffs and defendants and the attorneys of record in the severed case. When a severance order is entered, a new cause number will be assigned to the severed case

G. Policies (General). The Presiding Judge will adhere to the following policies:

1. *Telephone Hearings (non-inmate).* If an attorney or a self-represented litigant is in need of a hearing by telephone, a Motion for Telephonic Hearing must be filed and set with the Presiding District Clerk on three days' notice to the opposing party/attorney. Alternatively, if all parties agree that the telephone hearing can take place, a Rule 11 Agreement must be submitted for filing prior to the date that the hearing will take place. If no agreement can be reached, a telephonic or other hearing on the motion will take place as designated by the Presiding Judge or the Judge to whom the case is assigned.

2. *Telephone Hearings (Inmates).* If a party to any proceeding is incarcerated and has filed an answer or has been notified of a hearing but the time for filing an answer has not yet passed, or the inmate or their counsel has otherwise requested a hearing, the incarcerated party shall have the right to participate in the scheduled hearing by telephone, or, if the inmate is in the Bexar County Jail, a bench warrant may be issued. The decision to schedule a telephone hearing with a Bexar County inmate or to bench warrant the inmate shall be made by the Presiding District Judge. All telephone hearings are processed by the Staff Attorney's Office, (210) 335-2123.

3. *Foreign Language and Sign Language Interpreters.* All interpreters are scheduled through the Office of the Civil District Court General Administrative Counsel (210) 335-2300. A party that needs an interpreter other than a Spanish language interpreter should, to the extent possible, call the office to arrange for the interpreter at least two weeks in advance of the hearing. If the party requesting the interpreter determines that the interpreter is no longer required, the party must notify the Office of the Civil District Court General Administrative Counsel immediately. Spanish language interpreters are generally available on a daily basis and no advance request is required.

4. *Copies of Documents.* All persons requesting copies of documents by mail from the District Clerk must furnish the clerk a return, self-addressed, stamped envelope.

5. *Mediation Rules.* The Bexar County Civil District Judges have adopted rules for mediation, which are available on the district clerk's website. Mediation may be ordered in a non-jury case by a judge at the judge's discretion. Mediation is required in jury cases pursuant to Rule 8 of these local rules.

H. Policies (Family Law). These policies are not intended to, and shall not, modify or supersede the Texas Rules of Civil Procedure or the Texas Family Code.

1. *Standing Order Regarding Children, Property and Conduct of the Parties in Divorce Suits and Suits Affecting the Parent-Child Relationship.* Bexar County District Courts require that in every divorce case and in suits affecting the parent-child relationship, the Petitioner shall attach to the original petition and to each copy of the petition a copy of the Bexar County Standing Order Regarding Children, Property and Conduct of the Parties.

2. *Required Education.* Unless otherwise ordered by the Court, all parties involved in divorces with minor children must complete the Helping Children Cope with Divorce, KIDS (Kids in Divorce Situations), or some similar education before their divorce will be granted.

3. *Testimony by Minors.* The Courts discourage calling minor children as witnesses to testify in court in family law matters involving

their parents. If a minor child's testimony is absolutely required, children are not to be brought to court to testify until such time as their testimony is scheduled by the judge.

4. *Default Divorces.* On entry of default divorce decrees, all parties shall comply with the requirements of Texas Rules of Civil Procedure 239 and 239a including the requirement that a certificate of last known address of the defaulting party be filed. Pursuant to the Servicemembers' Civil Relief Act, all default judgments must be accompanied by a non-military affidavit with sufficient facts for the Court to determine the military status of the defaulting party or with a Military Status Report from the Department of Defense Manpower Data Center attached.

5. *Social Studies and Psychological Evaluations.* When the Court orders a social study or a psychological evaluation, the parties shall not appear for a contested final hearing until the social study or psychological evaluation has been completed. If there is difficulty obtaining the social study or psychological evaluation, or some reason that the study or evaluation is no longer warranted, the parties must seek relief from the order requiring the social study or psychological evaluation before appearing for trial. All social studies and psychological evaluations shall be completed within 90 days absent leave of the court.

6. *Divorce Trials.* Unless waived by the Court, all litigants appearing for trial involving property or liability issues shall present the Court with a sworn Inventory & Appraisement substantially in the format of the sample posted to the district clerk's website, which shall contain an itemization including values of all contested items of property and all indebtednesses.

7. *Trials and Hearings Relating to Support.* Unless otherwise waived by the Court, all litigants involved in trials or hearings relating to child support or spousal support shall present the Court an itemization or summary of all of their income and expenses, substantially in the format of the sample posted to the district clerk's website, as well as a minimum of the prior 3 months of wage and income information and a tax return from the previous year, if child support and/or spousal support is an issue in the trial or hearing.

8. *Domestic Relations Office.* In cases involving children, the Court may, on its own motion, request that the Domestic Relations Office assist the Court. If the parties to a proceeding wish to involve the Domestic Relations Office in the case, a motion must be filed and a hearing set before the Presiding Civil District Judge. The Presiding Judge will determine if the involvement of the Domestic Relations Office is appropriate. No orders, including orders agreed to by the parties, will be signed unless the Presiding Judge has determined at a hearing that the involvement of the Domestic Relations Office will assist the Court.

Comment:

The following comments carry the same force and enforceability as the rules:

Rule 3. Non-jury Docket

8:30 Docket. The 8:30 docket was created in the 1980's to serve three purposes: (1) it clears out shorter matters early in the morning before the general docket is called at 9:00; (2) it gives the Presiding Court the early-morning assistance of the judges who are trying jury cases; and (3) it helps minimize conflicts for lawyers who have pretrial hearings but are in trial elsewhere in the courthouse by releasing them from their jury cases until 9:30.

Computation of Time. Under rules 4, 21, and 21a, T.R.C.P. weekends and holidays are not counted when calculating three-day notice periods and therefore notice must be given by Wednesday for a motion hearing on Monday. Three days are added to the notice periods when notice is given by mail.

It is helpful to understand how the Presiding Judge will interpret the common announcements at docket call and what action the judge will take:

No announcement by other side. If the opposing party does not answer, the judge will call you to the bench after the docket has been called and will review the file to confirm notice and to discuss with you the relief to be granted. In certain situations, the judge may ask you to telephone the other lawyer and find out why he or she did not come to court. This practice helps avoid time-consuming motions for rehearing.

Ready. If you have already conferred with opposing counsel, the matter cannot be resolved by agreement, and you need a hearing, you should announce ready. Once you have made a time announcement with the Presiding Court, you should not leave Presiding Court until you are assigned. Your failure to be present in Presiding Court when the case is to be assigned to the trial court will result in your matter not being assigned at that time.

Not ready. This means you have conferred, you are not ready, and you want to postpone the hearing. Presumably, the other side will not agree to a continuance; otherwise the setting would be dropped or reset by agreement.

Conferring. Frequently you will want to talk with opposing counsel in the hall or a conference room, but you want to keep your setting and be assigned to a court in the event you cannot reach an agreement. Judges want lawyers to confer because many disputes can be resolved when the lawyers talk face-to-face. Frequently, in family law cases there has been no opportunity to talk. The suit has just been filed, and the petitioner does not know whether the respondent will appear, or whether he has retained an attorney or is pro se. In such cases the judge will want both sides to confer, at least briefly. After you have conferred, if there is no agreement and you need a ruling, you should return to court and give your announcement and time estimate to the clerk or the judge. If you are still conferring at 11:00 A.M., you must report this to the clerk so the case will be kept on the docket while you continue to confer.

Dropped settings. In many cases you have not been able to serve or notify the other side, or you have your opponent's agreement to drop the setting and try to work things out informally, or perhaps you and your opponent have resolved your matter by agreement but do not intend to have a written order signed. In these situations you should ask that the setting be dropped. You have no right to drop a setting over your opponent's objection, even when it is your setting.

Agreed resets. This means you and opposing counsel both want the matter reset. If you are ready and have conferred but cannot agree to the other side's request for a reset, you should announce ready and let your opponent seek a continuance.

Agreed orders. When the issues set for hearing have been settled, a written agreed order should be submitted later. Be sure to state whether

you need to present proof (e.g., in divorce settlements) or make a record pursuant to Rule 11, T.R.C.P.

Time estimates. Attorneys are expected to make realistic estimates of the time they think will be needed for the entire hearing.

4. Jury Docket (Monitoring Court and Jury Assignment Clerk)

A. General. Trials on the merits in all jury cases and in nonjury cases referred by the Presiding Judge are scheduled and assigned through the Jury Assignment Clerk. Each week, the Jury Assignment Clerk assigns jury trials (and referred non-jury matters) to courts as they become open. Jury cases are set for a specific week. Cases not reached during the week of the setting are automatically reset for trial during carry-over week — the last week of the month — without further notice. Each quarter of the year, a different civil district judge serves a rotation as Monitoring Judge. Motions on jury cases affecting trial settings — such as motions for continuance, motions for special setting, motions for pretrial scheduling order, motions to designate a case as complex, and motions to modify or extend a deadline in a scheduling order — are heard by the Monitoring Judge.

B. Procedures. Each week's jury docket is handled in the following manner.

1. *Friday*. By Friday, the Jury Assignment Clerk assigns cases to specific courts for trial, beginning with DFPS cases, followed by family-law cases and special settings, and working through the docket in numerical order, taking the older cases first. The clerk telephones lawyers and notifies them to which court they are assigned for trial on Monday. Motions in Limine, Motions to Realign Parties, Motions to Equalize Peremptory Challenges, and proposed Jury Charges are to be filed and exchanged the last business day before the jury trial date.

2. *Monday*. The cases remaining on the docket after the assignments on Friday are called for announcements at 8:30 on Monday morning in Monitoring Court. Lawyers are expected to announce whether they are ready for trial (with the estimated trial time), not ready and filing a motion for continuance, or that the case has been settled. When the Monday morning docket has been called, the clerk will tell lawyers where their case

ranks numerically on the list of remaining cases. Every case will be subject to assignment through Thursday. Cases not reached and assigned to a court by Thursday will automatically be placed on the docket for carry-over week (the last week of the month) for trial at that time.

3. *Tuesday, Wednesday, and Thursday.* During the middle of each week, the Monitoring Judge hears motions for continuance, motions to designate cases as complex, motions for special setting, and motions for pretrial scheduling orders. Settings on all jury matters except dismissals for want of prosecution are obtained through the Jury Assignment Clerk's office. Call 210-335-2520 for available hearing dates.

C. Policies. The Monitoring Judge will adhere to the following policies:

1. *Agreed Continuances.* When a continuance is agreed or unopposed, a motion must be presented to the Monitoring Court so that if the motion is granted the judge can select a reset date that is available for additional settings and reasonably acceptable to all lawyers. In certain situations a hearing may be required. Questions should be directed to the Jury Assignment Clerk, (210) 335-2520.

2. *Special Settings.* The Monitoring Judge may grant a special setting, which will place the case at the beginning of a week's docket before the ordinary settings. This decision requires a motion and hearing in Monitoring Court, even if all parties agree.

3. *Complex Cases.* The Monitoring Judge has the discretion to remove a case from the central docket for assignment to one judge for all further pretrial matters and trial on the merits. A motion and hearing in Monitoring Court is required even if all parties agree. If the motion is granted, the Jury Assignment Clerk and the Monitoring Judge will use a predetermined random procedure to determine which judge will preside over the case to its conclusion.

4. *Dismissal Docket.* Periodically the District Clerk sets older cases for dismissal for want of prosecution and notifies the

parties of the dismissal setting in Monitoring Court. Cases are set for dismissal docket the second and fourth Tuesdays of each month at 8:30 A.M. If no one appears at the hearing to ask that the case be retained on the docket, it will be dismissed. The Monitoring Judge decides which cases to retain on the docket and hears any motions to reinstate cases that have been previously dismissed for want of prosecution. It is the responsibility of the attorney or the party, if self-represented, to notify the Dismissals Clerk that a final order has been signed on a case which is set on the dismissal docket. The Dismissals Clerk may be reached at (210) 335-2120. Failure to notify the clerk of the signing of the final order may result in dismissal of the cause. Any case set on the dismissal docket cannot be set on the jury docket until a hearing is held before the monitoring judge and an order allowing the jury setting is obtained.

Comment:

The following comments carry the same force and enforceability as the rules:

Rule 4.

Limits on weekly settings. Years of experience with this system have proven that no week should be overloaded with jury settings because if too many cases are set at one time the courts will not be able to try all of them. If this were allowed to happen, the system would lose the predictability that is one of its main strengths. For this reason, the Jury Assignment Clerk sets limits on the number of weekly jury settings. Most of the time, each case is reached and disposed of during the week of the initial setting. Any remaining cases are invariably reached and tried during carry-over week.

"Longer non-jury cases" are removed from the Presiding Court docket and assigned with the jury cases because the Presiding Court cannot afford to devote any of its assisting judges to a long case.

"Carry-over week" is an important part of the system because it adds certainty to the trial settings earlier in the month: Lawyers and litigants

know that any cases not reached earlier in the month will be tried during the last week of the month, and this knowledge promotes settlement.

"Special settings" are given only when there are several out-of-town witnesses or parties, or when the litigants and witnesses have significant scheduling problems. In addition, they are sometimes granted in cases that will require two weeks or more to try. Within one week after a case has been given a special setting, the attorneys are expected to submit an agreed pretrial scheduling order or, if agreement is not reached, to set the matter for hearing.

"Complex Cases." The central docket is not designed to handle those rare cases which are very complicated and require repeated pretrial hearings. In such cases, the central docket can produce inconsistent rulings, as lawyers constantly have to "reinvent the wheel" with each new judge who is assigned a hearing.

5. Scheduling Hearings

A. Non-jury Settings. A party may schedule a nonjury trial or hearing by filing a motion to set on a specific date and time with the Presiding Civil Court (210-335-2000), and serving a copy of the motion and a conformed copy of the order on all other parties. If the non-jury matter is expected to last longer than two days, a Motion for Referral to Jury Assignment Clerk must be filed and set at 8:30 A.M. in Presiding Court. The Presiding Judge will decide if the matter will be referred to the Jury Assignments Clerk for a setting.

B. Jury Settings. A party may schedule a jury trial by obtaining a date and time from the Jury Assignment Clerk (210-335-2520), providing the clerk a motion to set and an order, and serving a copy of the motion and a conformed copy of the order on all other parties. When a case is set for jury trial, the parties are scheduled for a hearing on the ADR docket. The jury fee must be paid prior to the setting or at the time of setting a case on the jury docket.

Comment:

The following comments carry the same force and enforceability as the rules:

Rule 5.

The notice of hearing or fiat that sets the matter for trial or other hearing must contain a short order at the end of the motion and a certificate of service signed by the attorney or self-represented party indicating that a copy of the notice has been sent to all opposing attorneys or self-represented parties.

6. *Ex Parte* Requests

A. General. Every request for relief from a civil district court must be presented to the Presiding Court, with the exception of the uncontested matters specified in Subsection B.

B. Uncontested Matters. The following matters may be presented to any available district judge: agreed and waiver divorces; agreed orders; nonsuits; friendly suits; uncontested adoptions; and uncontested requests for change of name.

C. Temporary Restraining Orders. All temporary restraining orders must be presented by an attorney or a self-represented party to Presiding Court for decision or for assignment to another judge. The attorney or party, if self-represented, making the request shall state in writing that: (1) to the best of his knowledge the respondent is not represented by counsel, (2) he has tried and has been unable to contact opposing counsel about the application, (3) opposing counsel has been notified of the application and does not wish to be heard, or (4) notifying the respondent or his counsel would cause irreparable harm to the movant.

D. Other Extraordinary Relief. Other requests for extraordinary relief, such as requests for writs of habeas corpus, sequestration, attachment, and garnishment, and requests for family law protective orders, must be presented by an attorney or a self-represented party to the Presiding Judge for decision or assignment to another judge. When any judge has denied such a request, the matter may not be presented to a different judge without assignment by the Presiding Court. In the case of ex parte and final protective orders, there are two forms which must be attached to all said orders. The forms are entitled “Schedule A” and “Data Entry Form for Texas Crime Information Center” and are available in the Bexar County District Clerk’s Office and on the Bexar County District Clerk’s website.

Comment:

The following comments carry the same force and enforceability as the rules:

Rule 6.

Temporary Restraining Orders. Except as set out in Rule 6C of these rules, if an attorney is aware that another party is represented by counsel or is reasonably sure that the other party has counsel, the proponent of the temporary restraining order must give notice to opposing counsel that the TRO will be presented to the Presiding Judge at a specific date and time. When relying on rule 6(C)(2), the applicant should describe with reasonable particularity the unsuccessful efforts to contact opposing counsel.

7. Post-Trial Hearings

A. Contested Trials and Hearings. With the exception of post-judgment discovery and enforcement proceedings and family-law motions to modify or clarify a final order, after a contested trial on the merits all motions must be scheduled with and heard by the judge who presided over the trial. Motions to enter a judgment, order, or decree should be scheduled directly with the judge who made the ruling at issue.

B. Default Judgments. Motions to set aside or modify no-answer default judgments must be set before the Presiding Court in the same manner as other non-jury matters. Motions to set aside or modify post-answer default judgments (e.g., after failure to appear for trial or after the granting of sanctions) must be set before the judge who granted the judgment.

8. ADR Docket

A. ADR Hearing. Each month one judge will be responsible for deciding whether cases should be referred for alternate dispute resolution. All jury cases will be scheduled for an ADR hearing before trial. At the ADR hearing it will be presumed that mediation should be ordered, but the ADR judge may decide that mediation would not be appropriate in a particular case. In most cases the court will order mediation and appoint a mediator. If no one appears at the ADR docket, and a written agreement has not been presented, the court will order mediation and select a mediator at random from a list

of qualified mediators. If the parties do not mediate in accordance with the court's order, it is within the discretion of the Monitoring Court to impose sanctions.

B. Mediation Agreements. The court will honor agreements that choose a particular mediator. Agreements must state the mediator's name, how the fee will be split, and the deadline for mediation, and must contain a provision authorizing sanctions for noncompliance.

C. Pro Bono Mediations. Any agreement to use a Pro Bono mediator must be approved by the ADR Judge after a showing of the inability to pay by one of the parties to the suit.

9. Vacations and Other Unavailability

A. Notice. Attorneys who plan to take a vacation, or who know that they will be unavailable for hearings, and who wish to prevent the scheduling of hearings during their absence must give written notice to the Bexar County District Clerk and to the attorneys-in-charge for other parties in the cases affected at least two weeks before the vacation or period of unavailability will begin. The notification letter must provide an address, telephone number, and telecopier number for service of notice and in family-law cases must designate alternate counsel in the event an emergency arises during the vacation or period of unavailability.

B. Existing Settings. Existing settings will not be dropped, postponed, or rescheduled solely on the basis of a vacation or unavailability letter. Attorneys who desire to take a vacation or otherwise be unavailable must reschedule existing hearings by agreed order or by motion for continuance and ruling from the Presiding Court.

10. Attorney General Involvement and Right to Notice

A. **Orders for Child Support.** Each order or decree which provides for child support to be paid through the Texas State Disbursement Unit shall be deemed to include an application for IV-D child support services provided through the Office of the Attorney General, pursuant to Texas Family Code section 231. Unless required to accept such services pursuant to other laws, a person entitled to receive IV-D child support services may decline such services by

filing a written Refusal of Child Support Services with the Bexar County District Clerk. Refusal of IV-D Child Support Services does not preclude that person from making a subsequent written application for such services.

B. Orders Adjudicating Parentage. All timely proceedings to adjudicate parentage and suits in which a denial of parentage has been filed and an order for genetic testing has been entered shall, upon filing, be deemed to include an application for Title IV-D services provided by the Office of the Attorney General of Texas pursuant to Chapter 231 of the Texas Family Code. The Office of the Attorney General is thereby a party entitled to notice of proceedings pursuant to Section 102.009(d) of the Texas Family Code. Unless required to accept such services pursuant to other laws, a person entitled to receive IV-D child support services may decline such services by filing a written Refusal of Child Support Services with the Bexar County District Clerk. Refusal of IV-D Child Support Services does not preclude that person from making a subsequent written application for such services.

C. Paternity Testing. The Office of the Attorney General shall coordinate genetic testing through the accredited and state approved and contracted vendor laboratory in all cases in which parentage is an issue to be determined and adjudicated by the Court, unless the parties agree to an adjudication of parentage, a valid acknowledgement of paternity has been filed, or the time limitation to bring the suit to adjudicate parentage has expired. Unless required to accept such services pursuant to other laws, a person entitled to receive IV-D child support services may decline such services by filing a written Refusal of Child Support Services with the Bexar County District Clerk. Refusal of IV-D Child Support Services does not preclude that person from making a subsequent written application for such services.

11. Applicability

These rules supersede and replace Part 3 (Civil District Court Rules) of the *Rules of Practice, Procedure and Administration in the District Courts of Bexar County* (_____20__).

Administrative Offices. The administrative offices of the Civil District Courts may be contacted as follows: *Presiding Civil District Court:* (210)

335-2000; *Civil District Courts General Administrative Counsel: (210) 335-2300; Jury Assignment Clerk:* (210) 335-2520; *ADR Coordinator: (*210) 335-3930; *Dismissals Clerk:* (210) 335-2120; Staff Attorney, Bexar County Civil District Courts*: (210) 335-2123.*

ADOPTION OF RULES

The foregoing "Local Rules, Bexar County Civil District Courts" are hereby adopted by the undersigned Civil District Judges in Bexar County, Texas on the 7TH day of November, 2012, and submitted to the Supreme Court of Texas for approval. These rules shall become effective on the 31st day after approval by the Supreme Court of Texas.

DAVID BERCHELMANN
37TH DISTRICT COURT

CATHLEEN STRYKER
224TH DISTRICT COURT

BARBARA NELLERMOE
45TH DISTRICT COURT

PETER SAKAI
225TH DISTRICT COURT

ANTONIA ARTEAGA
57TH DISTRICT COURT

RICHARD PRICE
285TH DISTRICT COURT

RENEE MCELHANEY
73RD DISTRICT COURT

SOLOMON CASSEB, III
288TH DISTRICT COURT

JOHN GABRIEL
131ST DISTRICT COURT

KAREN POZZAY
407TH DISTRICT COURT

JANET LITTLEJOHN
150TH DISTRICT COURT

LARRY NOLL
408TH DISTRICT COURT

MARTHA TANNER
166TH DISTRICT COURT

VICTOR NEGRON
438TH DISTRICT COURT

DAVID PEEPLES
JUDGE, 4TH ADMINISTRATIVE
JUDICIAL REGION

IN THE SUPREME COURT OF TEXAS

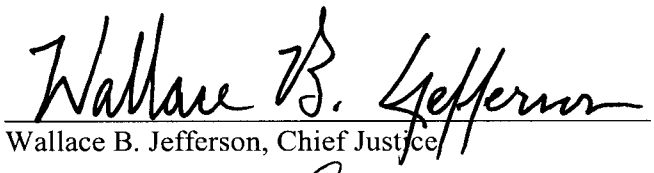
Misc. Docket No. 12- 9035

APPROVAL OF LOCAL RULES FOR THE DISTRICT AND COUNTY COURTS OF WILLACY AND CAMERON COUNTIES

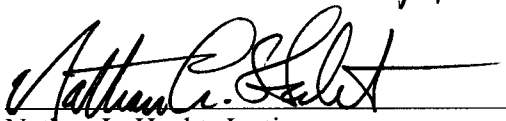
ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following local rules for the District and County Courts of Willacy and Cameron Counties.

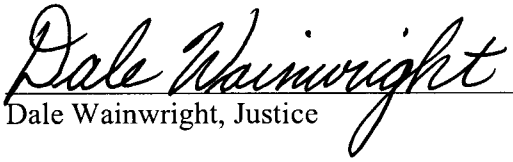
Dated: March 5, 2012.



Wallace B. Jefferson, Chief Justice



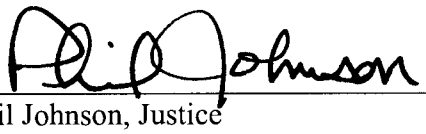
Nathan L. Hecht, Justice



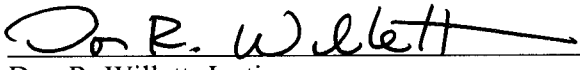
Dale Wainwright, Justice

David M. Medina, Justice

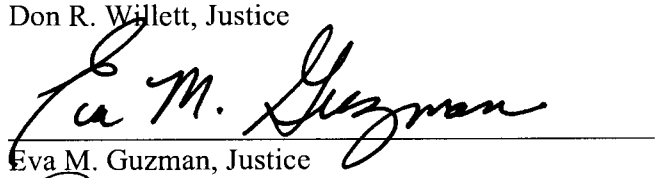
Paul W. Green, Justice



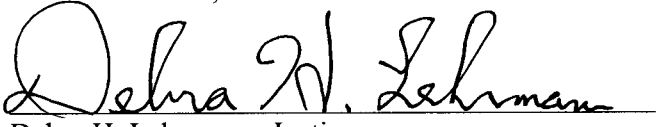
Phil Johnson, Justice



Don R. Willett, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

CAMERON COUNTY LOCAL RULES
INDEX

CAMERON COUNTY CIVIL COURT RULES
PART ONE
PRACTICE IN CIVIL CASES – DISTRICT COURT

1.1 FILING, ASSIGNMENT AND TRANSFER

(a) All civil cases, except as otherwise provided herein or by court order, shall be filed in the District Courts (and any district court hereafter created) in random order.

(b) Every suit or proceeding, in the nature of a bill or review or otherwise, seeking to attack, avoid, or set aside any judgment, order, or decree of a District Court of Cameron County shall be assigned to the court in which such judgment, order or decree was rendered.

(c) Every ancillary garnishment suit shall be assigned to the court in which the suit to which the garnishment is ancillary is pending. Every garnishment after judgment shall be assigned to the Court which rendered the judgment upon which the garnishment is founded.

(d) Except as hereinafter provided, after assignment to a particular court, every case shall remain pending in such court until final disposition, unless transferred pursuant to these rules, state statute, or court order.

(e) Every motion for consolidation or joint hearing of two or more cases shall be filed in the earliest case filed.

(f) Transfer of cases:

(1) Pursuant to V.T.C.A. Government Code, Court Adm. Act §74.092(1), the local administrative judge shall implement and execute the local rules of administration, including the assignment, docketing, transfer and hearing of cases.

(2) Whenever any pending case is related to another case previously filed in or disposed of by another District Court of Cameron County , any party with knowledge of that relationship must file a Motion to Transfer in the earlier case's Court seeking to have the second case transferred into the earlier case's Court. All such Motions shall be decided by the earlier case's Court. If a Motion to Transfer is improperly filed in the later case's Court, the Motion shall be stricken. The Judge of the Court in which a later case is or was pending shall, on notice and hearing, transfer the later case to the earlier case's Court, if the Court determines that the transfer of the later case to the earlier case's court would

facilitate order and efficient disposition of the litigation. Whether a case is "earlier" or "later" as those terms are used in this rule will be determined by the date-stamp from the District Clerk's office on the face of the first pleading filed in the case, and if necessary, any time of filing endorsed on that stamp. Where no time of filing is endorsed on the stamp the time filed will be assumed to have been 4:59 p.m.

(3) The following type of cases, though not comprehensive, are by definition cases which would require transfer into the earlier case's Court to "facilitate order and efficient disposition of the litigation":

(a) Any case arising out of the same transaction or occurrence as an earlier case, particularly if the earlier case was dismissed by plaintiff at any time before final judgment.

(b) Any case involving a plea that a judgment in the earlier case is conclusive of any of the issues of the later case by way of res judicata or estoppel by judgment, or any pleading that requires a construction of the earlier judgment or a determination of its effect.

(c) Any suit for declaratory relief concerning a liability insurer's duty to defend or indemnify a party to another pending suit;

(d) Any suit concerning a liability insurer's duty to defend or indemnity a party in a separate prior or pending suit.

(4) This rule does not apply to any case in which the presiding judge has determined that he or she must recuse him/herself. In such a case, the administrative judge for the Cameron County District Courts may transfer the case without notice or hearing. If a motion to recuse has been filed by any party and the presiding judge has not determined that he or she must recuse him/herself, the motion to recuse must be resolved pursuant to the requirements of the Texas Rules of Civil Procedure before any action can be taken on the Motion to Transfer. An oral motion to recuse is not recognized by the courts and is automatically denied. A motion to recuse must be in writing in order to be considered by the court.

(5) Whenever a case is transferred to Cameron County by a Court of another county, or is appealed, and the order of transfer or the appeal specifies the particular court to which the case is transferred, such specification shall be disregarded and the case shall be assigned to a court in the manner provided in subdivision (a) of these rules, except for cases transferred to a specific court pursuant to State MDL Rules (Rule 13, Texas Rules of Judicial Administration).

1.2 TEMPORARY ORDERS

Except in emergencies when the District Clerk's office is not open for business, no application for immediate or temporary relief shall be presented to a Judge until it has been filed and assigned to a court as provided in Rule 1.1. If the Judge of the court to which such case is assigned is absent or is occupied with other matters, such application may be presented to any District Judge, who may sit for the Judge of the court in which the case is pending and shall make all writs and process returnable to the court to which the case is assigned by the clerk. Where a temporary order requires a subsequent hearing pursuant to the Texas Rules of Civil Procedure and/or substantive law, including all cases in which a temporary restraining order has been granted, a date and time for the required hearing must be obtained from the court coordinator of the court in which the case has been assigned before the temporary order can be issued or considered enforceable. If a Judge does sign a Temporary Order for another court while the Judge and staff of the other court is on vacation, the Court or its staff shall notify the other court of the date given the Temporary Order for hearing. The party obtaining the temporary order must serve notice of the date and time of the required hearing with the temporary order.

1.3 EX PARTE ORDERS

(a) All applications for ex parte orders shall be presented in accordance with Rule 1.2.

(b) The standards for presenting applications for *ex parte* orders in family law cases do not apply in other civil cases. Counsel presenting any application for an ex parte order shall at the time the application is presented certify in writing to the court that:

(1) to the best of his knowledge the party against whom the relief is sought is not represented by counsel in the matter made the basis of the suit in which the relief is sought; or

(2) if such party is so represented by counsel, that (i) such counsel has been notified of the application and does not wish to be heard by the court thereon; or (ii) that counsel presenting the application has diligently attempted to notify such counsel and has been unable to do so and the circumstances do not permit additional efforts to give notice.

(c) Counsel presenting any application for an ex parte order shall at the time the application is presented further certify in writing that to the best of his or her knowledge, the case is which the application is presented is not subject to transfer under Rules 1.1 (f) . Or, if the case is subject to such a transfer, counsel shall fully advise the court of the circumstances, particularly as to whether there has been any previous

application for the same or similar relief or whether the relief sought will conflict with any previous order, and the Judge to whom the application is presented may decline to act and refer the application or the entire case pursuant to these rules to the Judge of the court to which the earlier related case is assigned.

1.4 TEMPORARY AND PROTECTIVE ORDERS IN FAMILY LAW MATTERS

(a) Requests for *ex parte* Temporary Restraining Orders in family law matters shall not include any request that the Court exclude a party from a joint residence or that party's own residence and any and all requests that one party be awarded exclusive possession of a residence shall be made only after notice and hearing except as otherwise specifically provided by the Texas Family Code.

(b) Requests for Protective Orders or for a Writ of Habeas Corpus for obtaining possession of a child in a family law matter shall not be submitted without an affidavit as specified in the Texas Family Code.

(c) Counsel seeking Protective Orders in family law matters must have a bona fide belief that any alleged family violence has in fact occurred and must not use a request for a Protective Order as means to obtain possession of a residence or of children absent that bona fide belief. An affidavit stating the bona fide belief is mandatory.

1.5 SEVERANCE

Motions to sever are not favored and will be granted only on a showing that a severance is necessary to protect substantial rights or to facilitate disposition of the litigation.

1.6 SETTING FOR TRIAL AND PRE-TRIAL

(a) At any time after the filing of an answer and on the request or motion of any party or on the Judge's own motion, the Court Coordinator, acting on direction of the Judge, may set a docket control conference with all counsel in order to set the case for trial on the merits.

(b) A party shall request a pre-trial hearing where there are substantial pre-trial motions which are likely to take up the time of the Court on the date the case is otherwise set for trial. The Court, in its discretion, will then determine if a pre-trial hearing is needed to resolve those pretrial motions and shall issue notice of the date and time of the pre-trial hearing. The Court may always on its own Motion set a pre-trial hearing by issuing notice of the date and time of same to all parties

(c) Counsel attending a pre-trial hearing shall be either the counsel who expects to be lead attorney at trial or an attorney who has full authority to state the client's position of the law and facts on pending matters, to make stipulations, and to enter into settlement negotiations.

1.7 OTHER SETTINGS

(a) Counsel who request a hearing, pre-trial and/or trial date and who receives notice of same from the court and/or the court coordinator shall have the duty to give all other parties in the case written notice immediately of such setting and to furnish a copy of such notice to the clerk of the Court in which the case is pending. If a party receives his copy of notice by written order mailed to parties from the clerk's office, the party is excused from providing duplicative notice to all parties.

(b) No hearing shall be set on less than three (3) days' notice, and no party shall request a hearing on less than three (3) days' notice unless that party has filed a motion for emergency hearing, and has provided specific reasons for same. If filing a motion requesting an emergency hearing, counsel must provide a copy of the motion and written notice of the requested and/or any awarded hearing date by hand-delivery, telefax, electronic transmission, or other similar means most likely to insure that opposing counsel receives that notice. Counsel seeking the emergency hearing must also make a good faith effort to contact all opposing counsel's offices to confirm that the opposing counsel has received the written notice.

(c) No setting is required for a hearing on a default requiring no record or proof; however if there are any other parties to the case, notice to all such parties must be given before any attempt is made to approach the court to obtain a default. If other parties indicate a desire to be present, they must be given the opportunity to or be present, or a setting with at least three (3) days' notice must be obtained

(d) Testimony for defaults requiring proof shall be scheduled with the Court Coordinator of the Court in which the case is pending, and notice given to all parties.

1.8 SPECIAL SETTINGS

Special preferential settings may be made by the Judge when, because of unusual circumstances, more than ordinary difficulty would be encountered in having all counsel and witnesses available when the case is reached in regular order. Cases specially set shall take precedence over all other matters, except matters entitled to preference by law and matters commenced but not completed in the preceding week. Other engagements of counsel shall not be grounds for postponement of a case specially set, unless good cause is shown on motion and notice filed more than ten days before the date set for trial. No more than one case shall be specially set in any Court in any particular week.

1.9 GENERAL PLEADINGS

(a) An order sustaining a special exception or requiring a party to amend that party's pleading shall be deemed to require the amended pleading to be filed within 20 days after the order is signed or seven (7) days before trial commences, whichever dates comes first. Such orders may specify a different time limit. If special exceptions are granted or other orders of the court entered which would require amendment of pleadings within seven (7) days, the court shall specify at the time it makes its ruling the date on which the amended pleading necessitated by that ruling shall be due.

(b) Any order permitting a party to amend that party's pleading during trial shall be deemed to require the amended pleading to be filed no later than commencement of the charge conference. Such orders may specify a different time limit.

(c) All cases in which a court order is entered specifying pre-trial deadlines are Level 3 cases even if the words "Level 3" are not used in the Order. Whenever a Court's docket control order provides that expert designation obligations shall be handled pursuant to or by "the Rules," the dates in this subsection shall govern. If the docket control order does not specify dates on which each party's experts are to be designated, nor dates for disclosure information under Tex.R.Civ.P. 194 to be provided, the dates for such disclosures shall be as follows:

For Plaintiffs'/Third Party Plaintiffs' experts – 90 days prior to trial
For Defendants'/Third Party Defendants' experts – 60 days prior to trial

If a party is both a Defendant and a Third Party Plaintiff, Cross-Plaintiff and/or Counter-Plaintiff, then as to all issues on which it is seeking affirmative relief from another party, the expert designation date is the date for Plaintiffs'/Third Party Plaintiffs' experts.

1.10 INITIAL PRETRIAL CONFERENCE

(a) No later than the 90th day after suit is filed, Plaintiff shall request and any other party may request an initial pre-trial conference.

(b) Counsel for each party who has answered or otherwise entered an appearance with authority to speak for that party shall attend the initial pre-trial conference. The court may permit appearance by phone.

(c) At the initial pre-trial conference, the court and parties may address the following:

(1) whether all parties have been served
(2) any need to join additional parties
(3) pending related cases, if any, filed in Cameron County
(4) special exceptions
(5) all pending motions or dilatory pleas, or scheduling hearing on said motions
(6) a discovery schedule, including setting the discovery level, the scope and pace of discovery, setting deadlines for designating experts, and deadlines to complete discovery
(7) alternative dispute resolution
(8) agreements to serve documents electronically
(9) the entry of a docket control order and setting a trial date
(10) any other matter that may aid in the efficient disposition of the case

(d) Unless otherwise agreed by the parties, requesting or appearing at an initial pretrial conference is not deemed to waive a special appearance or motion to transfer venue. Unless otherwise by the parties, approval of a docket control or discovery order shall not be deemed to waive or compromise the deadlines for reports required by Texas Civil Practices and Remedies Code, chapter 74 and 90, as amended.

1.11 DILATORY PLEAS

(a) Rule 1.10 does not apply to special appearances, motions to transfer venue, pleas to the jurisdiction, motion to dismiss based on sovereign, governmental, or official immunity, motions to compel arbitration, or motions concerning class certification. The parties are encourages to set such pleas and motions so that they may be resolved as early as practicable before trial.

(b) If pleadings have been on file thirty (30) days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings are deemed waived unless timely filed and presented to the court for ruling ten (10) days before the date the case is scheduled to commence trial.

(c) If pleadings have been on file more than seven days but less than thirty (30) days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings are deemed waived unless timely filed and presented to the court at any scheduled pre-trial conference; if there is no scheduled final pre-trial conference, or it is not held, such pleas and exceptions shall be presented to the court before trial commences.

(d) If pleadings have been on file seven (7) or fewer days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings shall be presented to the court before trial commences.

1.12 DISCOVERY

(a) Any motion for discovery or for protection under the Texas Rules of Civil Procedure must contain a certificate of conference completed by the party filing same which certifies that said party has made a good faith effort as required under Tex.R.Civ.P. 191.2 to resolve the discovery issues without court intervention. If an objection has been made under Tex.R.Civ.P. 193.2(a), the parties will follow the procedure outlined in Tex.R.Civ.P. 193.4.

(b) If a discovery dispute regarding claims of privilege has arisen, under 193.3(a) and the party asserting privilege has been properly asked to provide privilege log information under Tex.R.Civ.P. 193 and has done so, the claims of privilege hearing will follow Tex.R.Civ.P. 193.4. Where the party disputing claims of privilege has not requested a privilege log under Tex.R.Civ.P. 193(b) and /or has not specified which items on the privilege log are still in dispute, that failure permits the Court to deny the Motion to Compel without prejudice to refiling after such steps are taken.

1.13 APPEARANCE IN COURT FOR HEARINGS, ANNOUNCEMENTS AND/OR TRIAL

(a) All professionals know what is generally expected in the way of courtroom decorum. The court shall in its discretion enforce specific standards of decorum in the courtrooms.

(b) Each court shall set a time for announcements of readiness for trial and shall notify all parties of the announcement date and time when providing notice of the trial setting.

(1) When no announcement is made on behalf of Plaintiff at the time scheduled, the case may be dismissed for want of prosecution.

(2) When no announcement is made on behalf of a Defendant at the time scheduled, the Court will be entitled to assume that Defendant to be ready.

(c) At the time of announcements, counsel shall submit to the court proposed questions and instructions for the jury charge. They will also advise the judge of anticipated conflicting engagements during the week of trial that may affect counsel's ability to attend trial. They will also advise the court whether settlement discussions are exhausted and of discussions on stipulations.

1.14 DISMISSAL FOR WANT OF PROSECUTION

A case may be dismissed for want of prosecution for any of the following reasons:

(a) Failure of Plaintiff to request a setting or take other appropriate action within thirty (30) days of notice from the Court that the case is subject to being dismissed for want of prosecution.

(b) Failure of Plaintiff's counsel to appear for pre-trial, or failure to appear for Final Hearing, Trial or any other hearing where there has been a previous failure to appear and/or no indication has been given to the court for the reason counsel has not yet appeared, or failure to timely file pleadings to meet the exceptions previously sustained.

Subject to other provision of these rules the clerk shall mail a written notice of such dismissal to all parties or their counsel of record.

1.15 WITHDRAWAL OF COUNSEL

No attorney of record shall be permitted to withdraw from any case without presenting a Motion pursuant to Tex.R.Civ.P. 10, including all requirements of same, obtaining a ruling and a signed Order granting withdrawal, and complying with the notice requirements for the former client under said Rule.

1.16 FILING OF PAPERS AND/OR ELECTRONIC FILING WITH THE DISTRICT CLERK

(a) All pleadings, Motions, Orders, and other papers, including exhibits attached thereto, when offered for filing or entry, shall be descriptively titled and pre-punched at the top of the page to accommodate the Clerk's 2 ¾" center to center flat-filing system. Each page of each instrument shall, in the lower margin thereof, be numbered and titled, e.g., Plaintiff's Original Petition – page 2. Orders and Judgments shall be completely separated from all other papers.

(b) Notices of Discovery shall not be filed.

(c) To the extent telefax and electronic filing is permitted and additional Local Rules for telefax and electronic filing have been adopted, they are incorporated by reference as if set forth herein, and they are to be followed. Facsimile filings are NOT accepted by specific courts. If the District Clerk allows facsimile filings, a telephone number where the document is to be sent should be obtained by calling 956/544-0838.

1.17 WITHDRAWAL AND COPYING OF FILES

(a) No file, pleadings or paper belonging to the files of the Court shall be taken from the office or custody or the Clerk except on order of the Judge of that Court. No order for such withdrawal shall be granted except for good cause shown. The order shall state the time within which the same shall be returned to the Clerk.

(b) A receipt specifying the pleadings or papers withdrawn shall be given to the Clerk by the Party withdrawing them. Statement of facts desired shall be obtained in the usual way from the Court Reporter. Except as elsewhere required, the Court Reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity nor to furnish such statement of facts prior to the payment therefor.

1.18 ORDERS AND JUDGMENTS

Unless the court directs otherwise, counsel shall submit proposed orders, decisions, and judgments to the Court for approval and signature within thirty (30) days after rendition or announcements of settlement. Counsel shall serve copies on all counsel. Failure to submit timely a proposed judgment or order disposing of the entire case may be considered as grounds to dismiss for want of prosecution under Rule 1.14.

PART TWO
COUNTY COURTS AT LAW

2.1 RULES APPLICABLE TO COUNTY COURTS AT LAW

(a) These rules are applicable to the County Courts at Law of this County in all cases on the Civil and Probate Dockets of said Courts.

(b) The rules governing the practice in civil cases in the District Court of Cameron County, as contained in part one of these rules, shall apply to the County Courts of Law. In such cases, references to the District Clerk shall apply to the County Clerk.

PART THREE
GENERAL AND MISCELLANEOUS

3.1 AUTHORITY FOR RULES

These rules are adopted under and by virtue of Texas Rule of Civil Procedure 3a, and the constitutional, statutory, and inherent powers of the Courts to regulate proceedings before them and to provide for the orderly and efficient dispatch of litigation.

3.2 REPEAL OF FORMER RULES

All previous local rules governing practice in the Civil District Courts and County Courts at law of Cameron County are hereby repealed, other than the Local Rules for telefax and electronic filing referenced in Local Rule 1.15(c), which remain in effect

3.3 TITLE AND CITATION

These rules shall be known as the "Cameron Civil District Court and County Court at Law Rules," and particular rules may be cited thus: "Cameron Civil Court Rule 3.3."

3.4 PARTIAL CIVIL INVALIDITY

In the event any of the foregoing rules or any part thereof is held to be invalid for any reason, such invalidity shall not affect the validity of the remaining rules and parts of rules, all of which have been separately considered and adopted.

3.5 "COUNSEL", "LAWYERS", "ATTORNEY OF RECORD"

The terms, "Counsel", "Lawyer", and "Attorney of Record" as used in theses rules shall, in the event a party appears pro se, i.e. without counsel, apply to individual litigants in the same fashion as if they were members of the Bar of the State of Texas.

3.6 CONDUCT OF THE GENERAL PUBLIC

The general public, witnesses, jurors, and parties attending court shall not:

a. bring food or beverages into the courtroom.
b. smoke in the courthouse.
c. prop feet on the furniture.
d. walk through the courtroom while the court is in open session.
e. by facial gesture or other nonverbal conduct exhibit approval or disapproval of witness, testimony, counsel's argument, the judge's ruling, or other events of proceedings.
f. have in their possession cell phones, pagers, PDA's, or personal music devices able or emit audible sounds in the courthouse.

3.7 CONDUCT OF COUNSEL

Counsel shall:

a. address their statements to the Court and not each other during court proceedings, except by leave of Court.
b. be prompt in attending Court.

c. dress appropriately in the decorum of the court.
d. prevent their cell phones, pagers, PDA's or personal music devices to ring or emit audible sounds in the courtroom.
e. not address each other or the judge by their first name or nicknames.
f. stand while addressing the judge, preferable from counsel table. Counsel and their staff shall remain at counsel table while examining witnesses, except when necessary to handle or display evidence.
g. refrain from inviting clients or witnesses to the judge's chambers, except by the judge's permission.
h. observe the disciplinary rules and ethical canons concerning *ex parte* contact with the court and its staff concerning pending cases, discussions with the media concerning pending cases, and civility to opposing counsel.
i. avoid leaning on the bench during court proceedings and conferences.
j. advise clients and witnesses of proper court decorum.
k. not interrupt the judge or opposing counsel, except when necessary to make a proper objection or otherwise protect a party's rights.
l. avoid "speaking objections" or legal arguments on objections before the jury, except by leave of court.
m. not address a juror directly or individually after voir dire until after the jurors are released from service, except by the court's permission.
n. because they are potentially disruptive of court proceedings and pose possible security risks, telephones, beepers, cameras, recording devices or other electronic devices shall not be brought into the courtroom without the expressed permission of the Court. Anyone that brings these items into the courtroom without the expressed permission of the Court is in violation of this order and subject to direct contempt of the Court and possible forfeiture of said item.

3.8 CONDUCT OF OFFICERS OF THE COURT, INCLUDING COUNSEL

a. All counsel are admonished to respect the letter and spirit of all canons of ethics, including particularly those dealing with testimony by counsel participating in the trial, discussion of cases with representatives of the press, T.V. or radio and discussion of the facts or law of the case with the Court outside of the Courtroom and not in the presence of opposing counsel. The Court may enforce the same by appropriate action.
b. The lawyers, the Judge, and all officers of the Court shall be prompt at all sessions and in dispatch of all Court business.
c. All lawyers and Court officials shall dress in keeping with proper Courtroom decorum and all male lawyers and Court officials shall wear coats and ties while in attendance of the Court; provided, however, that Judicial Discretion be exercised otherwise in special situations. No attorneys may wear jeans while in attendance of the Court.

d. While the Court is in session, all remarks of counsel shall be addressed to the Court, and not to opposing counsel or to the Judge as an individual.

e. In addressing the Judge, lawyers shall at all times rise and remain standing to address the Judge from the position at the counsel table. They shall remain standing to address the Judge from their position at the counsel table. They shall remain at counsel table while interrogating witnesses, except as may be necessary in handling or displaying of exhibits or demonstrating evidence.

f. The Judge shall be respectfully and properly addressed at all times; all objections and legal arguments by counsel shall be directed to the Judge and not to opposing counsel, and counsel shall be impersonal in addressing the Judge.

g. All counsel are requested to use the conference room for consultation with clients and witnesses and are further requested to refrain from inviting clients and witnesses into the Court Clerk's office and the Chambers except upon the discretion of the Judge. The telephone in the lawyers' lounge is provided for the attorneys to use on Court business only.

h. When the Judge addresses counsel it shall be impersonally, as by "Counsel" or by the last name, rather than by first name.

i. Lawyers shall never lean on the bench or engage the Judge in a confidential manner.

j. Lawyers shall advise their clients and witnesses of the proper courtroom decorum and attire, and seek their full cooperation therewith. This will prevent possible embarrassment to the Judges as well as to the lawyers and laymen.

k. After jury voir dire, no attorney shall ever address the jury or a juror individually or by name without having first obtained leave of Court. During trial, attorneys should not exhibit familiarity with witnesses, jurors or opposing counsel, and to this end, the use of first names should be avoided. During jury argument, no attorney should ever address a juror individually or by name.

l. The trial attorney should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when necessary to protect his client's rights on the record, and should respectfully await the completion of the Court's statement or opinion before undertaking to point out objectionable matter.

m. There will be no arguments on objections in the presence of the Jury. If counsel desire to argue his or her point after making objection, or being overruled on an objection, he or she shall ask the Court to exclude the jury before proceeding with such argument. However, argument will be permitted on objections at the discretion of the Court.

3.9 ADOPTION AND EFFECTIVE DATE

These rules shall be effective in all Courts to the extent applicable on and after the 27th of September, 2011.

SIGNED

Judge Migdalia Lopez
197th Judicial District Court

Judge Janet L. Leal
103rd Judicial District Court

Judge Benjamin Euresti, Jr.
107th Judicial District Court

Judge Arturo C. Nelson
138th Judicial District Court

Judge Leonel Alejandro
357th Judicial District Court

Judge Elia Cornejo Lopez
404th Judicial District Court

Judge David Sanchez
444th Judicial District Court

Judge Rolando Olvera
445th Judicial District Court

Judge Arturo McDonald, Jr.
County Court at Law No. 1

Judge Laura L. Betancourt
County Court at Law No. 2

Judge David Gonzales III
County Court at Law No. 3

FILED AND RECORDED

SUPREME COURT APPROVAL

WILLACY COUNTY CIVIL RULES

INDEX

WILLACY COUNTY CIVIL COURT RULES
PART ONE
PRACTICE IN CIVIL CASES – DISTRICT COURT

1.1 FILING, ASSIGNMENT AND TRANSFER

(a) All civil cases, except as otherwise provided herein or by court order, shall be filed in the District Courts (and any district court hereafter created) in random order.

(b) Every suit or proceeding, in the nature of a bill or review or otherwise, seeking to attack, avoid, or set aside any judgment, order, or decree of a District Court of Willacy County shall be assigned to the Court in which such judgment, order or decree was rendered.

(c) Every ancillary garnishment suit shall be assigned to the Court in which the suit to which the garnishment is ancillary is pending. Every garnishment after judgment shall be assigned to the Court which rendered the judgment upon which the garnishment is founded.

(d) Except as hereinafter provided, after assignment to a particular Court, every case shall remain pending in such Court until final disposition, unless transferred pursuant to these rules, state statute, or court order.

(e) Every motion for consolidation or joint hearing of two or more cases shall be filed in the earliest case filed.

(f) Transfer of cases:

(1) Pursuant to TV.T.C.A. Government Code, Court Adm. Act §74.092(1), the local administrative judge shall implement and execute the local rules of administration, including the assignment, docketing, transfer and hearing of cases.

(2) Whenever any pending case is related to another case previously filed in or disposed of by another District Court of Willacy County , any party with knowledge of that relationship must file a Motion to Transfer in the earlier case's Court seeking to have the second case transferred into the earlier case's Court. All such Motions shall be decided by the earlier case's Court. If a Motion to Transfer is improperly filed in the later case's Court, the Motion shall be stricken. The Judge of the Court in which a later case is or was pending shall, on notice and hearing, transfer the later case to the earlier case's Court, if the Court determines that the transfer of the later case to the earlier case's Court would

facilitate order and efficient disposition of the litigation. Whether a case is "earlier" or "later" as those terms are used in this rule will be determined by the date-stamp from the District Clerk's office on the face of the first pleading filed in the case, and if necessary, any time of filing endorsed on that stamp. Where no time of filing is endorsed on the stamp the time filed will be assumed to have been 4:59 p.m.

(3) The following type of cases, though not comprehensive, are by definition cases which would require transfer into the earlier case's Court to "facilitate order and efficient disposition of the litigation":

(a) Any case arising out of the same transaction or occurrence as an earlier case, particularly if the earlier case was dismissed by plaintiff at any time before final judgment.

(b) Any case involving a plea that a judgment in the earlier case is conclusive of any of the issues of the later case by way of res judicata or estoppel by judgment, or any pleading that requires a construction of the earlier judgment or a determination of its effect.

(c) Any suit for declaratory relief concerning a liability insurer's duty to defend or indemnify a party to another pending suit;

(d) Any suit concerning a liability insurer's duty to defend or indemnity a party in a separate prior or pending suit.

(4) This rule does not apply to any case in which the presiding judge has determined that he or she must recuse him/herself. In such a case, the administrative judge for the Willacy County District Court may transfer the case without notice or hearing. If a motion to recuse has been filed by any party and the presiding judge has not determined that he or she must recuse him/herself, the motion to recuse must be resolved pursuant to the requirements of the Texas Rules of Civil Procedure before any action can be taken on the Motion to Transfer. An oral motion to recuse is not recognized by the Court and is automatically denied. A motion to recuse must be in writing in order to be considered by the Court.

(5) Whenever a case is transferred to Willacy County by a Court of another county, or is appealed, and the order of transfer or the appeal specifies the particular Court to which the case is transferred, such specification shall be disregarded and the case shall be assigned to a court in the manner provided in subdivision (a) of this rule, and such case shall thereafter be subject to the provisions of these rules, except for cases transferred to a specific court pursuant to State MDL Rules (Rule 13, Texas Rules of Judicial Administration).

1.2 TEMPORARY ORDERS

Except in emergencies when the District Clerk's office is not open for business, no application for immediate or temporary relief shall be presented to a Judge until it has been filed and assigned to a Court as provided in Rule 1.1. If the Judge of the Court to which such case is assigned is absent or is occupied with other matters, such application may be presented to any District Judge, who may sit for the Judge of the Court in which the case is pending and shall make all writs and process returnable to the Court to which the case is assigned by the clerk. Where a temporary order requires a subsequent hearing pursuant to the Texas Rules of Civil Procedure and/or substantive law, including all cases in which a temporary restraining order has been granted, a date and time for the required hearing must be obtained from the Court Coordinator of the Court in which the case has been assigned before the temporary order can be issued or considered enforceable. If a Judge does sign a Temporary Order for another Court while the Judge and staff of the other Court is on vacation, the court or its staff shall notify the other court of the date given the Temporary Order for hearing. The party obtaining the temporary order must serve notice of the date and time of the required hearing with the temporary order.

1.3 EX PARTE ORDERS

(a) All applications for ex parte orders shall be presented in accordance with Rule 1.2.

(b) The standards for presenting applications for *ex parte* orders in family law cases do not apply in other civil cases. Counsel presenting any application for an ex parte order shall at the time the application is presented certify in writing to the Court that:

(1) to the best of his knowledge the party against whom the relief is sought is not represented by counsel in the matter made the basis of the suit in which the relief is sought; or

(2) if such party is so represented by counsel, that (i) such counsel has been notified of the application and does not wish to be heard by the Court thereon; or (ii) that counsel presenting the application has diligently attempted to notify such counsel and has been unable to do so and the circumstances do not permit additional efforts to give notice.

(c) Counsel presenting any application for an ex parte order shall at the time the application is presented further certify in writing that to the best of his or her knowledge, the case is which the application is presented is not subject to transfer under

Rules 1.1 (f) . Or, if the case is subject to such a transfer, counsel shall fully advise the Court of the circumstances, particularly as to whether there has been any previous application for the same or similar relief or whether the relief sought will conflict with any previous order, and the Judge to whom the application is presented may decline to act and refer the application or the entire case pursuant to these rules to the Judge of the court to which the earlier related case is assigned.

1.4 TEMPORARY AND PROTECTIVE ORDERS IN FAMILY LAW MATTERS

(a) Requests for *ex parte* Temporary Restraining Orders in family law matters shall not include any request that the Court exclude a party from a joint residence or that party's own residence. Any and all requests that one party be awarded exclusive possession of a residence shall be made only after notice and hearing except as otherwise specifically provided by the Texas Family Code.

(b) Requests for Protective Orders or for a Writ of Habeas Corpus for obtaining possession of a child in a family law matter shall not be submitted without an affidavit as specified in the Texas Family Code.

(c) Counsel seeking Protective Orders in family law matters must have a bona fide belief that any alleged family violence has in fact occurred and must not use a request for a Protective Order as means to obtain possession of a residence or of children absent that bona fide belief. An affidavit stating the bona fide belief is mandatory.

1.5 SEVERANCE

Motions to sever are not favored and will be granted only on a showing that a severance is necessary to protect substantial rights or to facilitate disposition of the litigation.

1.6 SETTING FOR TRIAL AND PRE-TRIAL

(a) At any time after the filing of an answer and on the request or motion of any party or on the Judge's own motion, the Court Coordinator, acting on direction of the Judge, may set a docket control conference with all counsel in order to set the case for trial on the merits.

(b) A party shall request a pre-trial hearing where there are substantial pre-trial motions which are likely to take up the time of the Court on the date the case is otherwise set for trial. The Court, in its discretion, will then determine if a pre-trial hearing is needed to resolve those pretrial motions and shall issue notice of the date and time of the

pre-trial hearing. The Court may always on its own Motion set a pre-trial hearing by issuing notice of the date and time of same to all parties.

(c) Counsel attending a pre-trial hearing shall be either the counsel who expects to be lead attorney at trial or an attorney who has full authority to state the client's position of the law and facts on pending matters, to make stipulations, and to enter into settlement negotiations.

1.7 OTHER SETTINGS

(a) Counsel who request a hearing, pre-trial and/or trial date and who receives notice of same from the Court and/or the Court Coordinator shall have the duty to give all other parties in the case written notice immediately of such setting and to furnish a copy of such notice to the clerk of the Court in which the case is pending. If a party receives his copy of notice by written order mailed to parties from the clerk's office, the party is excused from providing duplicative notice to all parties.

(b) No hearing shall be set on less than three (3) days' notice, and no party shall request a hearing on less than three (3) days' notice unless that party has filed a motion for emergency hearing, and has provided specific reasons for same. If filing a motion requesting an emergency hearing, counsel must provide a copy of the motion and written notice of the requested and/or any awarded hearing date by hand-delivery, telefax, electronic transmission, or other similar means most likely to insure that opposing counsel receives that notice. Counsel seeking the emergency hearing must also make a good faith effort to contact all opposing counsel's offices to confirm that the opposing counsel has received the notice.

(c) No setting is required for a hearing on a default requiring no record or proof; however, if there are any other parties to the case, notice to all such parties must be given before any attempt is made to approach the Court to obtain a default. If other parties indicate a desire to be present, they must be given the opportunity to or be present, or a setting with at least three (3) days' notice must be obtained.

(d) Testimony for defaults requiring proof shall be scheduled with the Court Coordinator of the Court in which the case is pending, and notice given to all parties.

1.8 SPECIAL SETTINGS

Special preferential settings may be made by the Judge when, because of unusual circumstances, more than ordinary difficulty would be encountered in having all counsel and witnesses available when the case is reached in regular order. Cases specially set shall take precedence over all other matters, except matters entitled to preference by law and matters commenced but not completed in the preceding week. Other engagements of

counsel shall not be grounds for postponement of a case specially set, unless good cause is shown on motion and notice filed more than ten days before the date set for trial. No more than one case shall be specially set in any court in any particular week.

1.9 GENERAL PLEADINGS

(a) An order sustaining a special exception or requiring a party to amend that party's pleading shall be deemed to require the amended pleading to be filed within 20 days after the order is signed or seven (7) days before trial commences, whichever date comes first. Such orders may specify a different time limit. If special exceptions are granted or other orders of the Court entered which would require amendment of pleadings within seven (7) days, the Court shall specify at the time it makes its ruling the date on which the amended pleading necessitated by that ruling shall be due.

(b) Any order permitting a party to amend that party's pleading during trial shall be deemed to require the amended pleading to be filed no later than commencement of the charge conference. Such orders may specify a different time limit.

(c) All cases in which a court order is entered specifying pre-trial deadlines are Level 3 cases even if the words "Level 3" are not used in the Order. Whenever a court's docket control order provides that expert designation obligations shall be handled pursuant to or by "the Rules," the dates in this subsection shall govern. If the docket control order does not specify dates on which each party's experts are to be designated, nor dates for disclosure information under Tex.R.Civ.P. 194 to be provided, the dates for such disclosures shall be as follows:

For Plaintiffs'/Third Party Plaintiffs' experts – 90 days prior to trial
For Defendants'/Third Party Defendants' experts – 60 days prior to trial

If a party is both a Defendant and a Third Party Plaintiff, Cross-Plaintiff and/or Counter-Plaintiff, then as to all issues on which it is seeking affirmative relief from another party, the expert designation date is the date for Plaintiffs'/Third Party Plaintiffs' experts.

1.10 INITIAL PRETRIAL CONFERENCE

(a) No later than the 90th day after suit is filed, Plaintiff shall request and any other party may request an initial pre-trial conference.

(b) Counsel for each party who has answered or otherwise entered an appearance with authority to speak for that party shall attend the initial pre-trial conference. The Court may permit appearance by phone.

(c) At the initial pre-trial conference, the Court and parties may address the following:

(1) whether all parties have been served
(2) any need to join additional parties
(3) pending related cases, if any, filed in Willacy County
(4) special exceptions
(5) all pending motions or dilatory pleas, or scheduling hearing on said motions
(6) a discovery schedule, including setting the discovery level, the scope and pace of discovery, setting deadlines for designating experts, and deadlines to complete discovery
(7) alternative dispute resolution
(8) agreements to serve documents electronically
(9) the entry of a docket control order and setting a trial date
(10) any other matter that may aid in the efficient disposition of the case

(d) Unless otherwise agreed by the parties, requesting or appearing at an initial pretrial conference is not deemed to waive a special appearance or motion to transfer venue. Unless otherwise agreed by the parties, approval of a docket control or discovery order shall not be deemed to waive or compromise the deadlines for reports required by Texas Civil Practices and Remedies Code, chapter 74 and 90, as amended.

1.11 DILATORY PLEAS

(a) Rule 1.10 does not apply to special appearances, motions to transfer venue, pleas to the jurisdiction, motion to dismiss based on sovereign, governmental, or official immunity, motions to compel arbitration, or motions concerning class certification. The parties are encourages to set such pleas and motions so that they may be resolved as early as practicable before trial.

(b) If pleadings have been on file thirty (30) days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings are deemed waived unless timely filed and presented to the Court for ruling ten (10) days before the date the case is scheduled to commence trial.

(c) If pleadings have been on file more than seven (7) days but less than thirty (30) days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings are deemed waived unless timely filed and presented to the Court at any scheduled pre-trial conference; if there is no scheduled final pre-trial conference, or it is not held, such pleas and exceptions shall be presented to the Court before trial commences.

(d) If pleadings have been on file seven (7) or fewer days before trial is scheduled to commence, any dilatory pleas and special exceptions to those pleadings shall be presented to the Court before trial commences.

1.12 DISCOVERY

(a) Any motion for discovery or for protection under the Texas Rules of Civil Procedure must contain a certificate of conference completed by the party filing same which certifies that said party has made a good faith effort as required under Tex.R.Civ.P. 191.2 to resolve the discovery issues without court intervention. If an objection has been made under Tex.R.Civ.P. 193.2(a), the parties will follow the procedure outlined in Tex.R.Civ.P. 193.4.

(b) If a discovery dispute regarding claims of privilege has arisen, under 193.3(a) and the party asserting privilege has been properly asked to provide privilege log information under Tex.R.Civ.P. 193 and has done so, the claims of privilege hearing will follow Tex.R.Civ.P. 193.4. Where the party disputing claims of privilege has not requested a privilege log under Tex.R.Civ.P. 193(b) and /or has not specified which items on the privilege log are still in dispute, that failure permits the Court to deny the Motion to Compel without prejudice to re-filing after such steps are taken.

1.13 APPEARANCE IN COURT FOR HEARINGS, ANNOUNCEMENTS AND/OR TRIAL

(a) All professionals know what is generally expected in the way of courtroom decorum. The Court shall in its discretion enforce specific standards of decorum in the courtrooms.

(b) Each court shall set a time for announcements of readiness for trial and shall notify all parties of the announcement date and time when providing notice of the trial setting.

(1) When no announcement is made on behalf of Plaintiff at the time scheduled, the case may be dismissed for want of prosecution.

(2) When no announcement is made on behalf of a Defendant at the time scheduled, the Court will be entitled to assume that Defendant to be ready.

(c) At the time of announcements, counsel shall submit to the Court proposed questions and instructions for the jury charge. They will also advise the judge of anticipated conflicting engagements during the week of trial that may affect counsel's ability to attend trial. They will also advise the Court whether settlement discussions are exhausted and of discussions on stipulations.

1.14 DISMISSAL FOR WANT OF PROSECUTION

A case may be dismissed for want of prosecution for any of the following reasons:

(a) Failure of Plaintiff to request a setting or take other appropriate action within thirty (30) days of notice from the Court that the case is subject to being dismissed for want of prosecution.

(b) Failure of Plaintiff's counsel to appear for pre-trial, or failure to appear for Final Hearing, Trial or any other hearing where there has been a previous failure to appear and/or no indication has been given to the Court for the reason counsel has not yet appeared, or failure to timely file pleadings to meet the exceptions previously sustained.

Subject to other provision of these rules the clerk shall mail a written notice of such dismissal to all parties or their counsel of record.

1.15 WITHDRAWAL OF COUNSEL

No attorney of record shall be permitted to withdraw from any case without presenting a Motion pursuant to Tex.R.Civ.P. 10, including all requirements of same, obtaining a ruling and a signed Order granting withdrawal, and complying with the notice requirements for the former client under said Rule.

1.16 FILING OF PAPERS AND/OR ELECTRONIC FILING WITH THE DISTRICT CLERK

(a) All pleadings, Motions, Orders, and other papers, including exhibits attached thereto, when offered for filing or entry, shall be descriptively titled and pre-punched at the top of the page to accommodate the Clerk's 2 ¾" center to center flat-filing system. Each page of each instrument shall, in the lower margin thereof, be numbered and tilted, e.g., Plaintiff's Original Petition – page 2. Orders and Judgments shall be completely separated from all other papers.

(b) Notices of Discovery shall not be filed.

(c) To the extent telefax and electronic filing is permitted and additional Local Rules for telefax and electronic filing have been adopted, they are incorporated by reference as if set forth herein, and they are to be followed.

1.17 WITHDRAWAL AND COPYING OF FILES

(a) No file, pleadings or paper belonging to the files of the Court shall be taken from the office or custody or the Clerk except on order of the Judge of that Court. No order for such withdrawal shall be granted except for good cause shown. The order shall state the time within which the same shall be returned to the Clerk.

(b) A receipt specifying the pleadings or papers withdrawn shall be given to the Clerk by the party withdrawing them. Statement of facts desired shall be obtained in the usual way from the Court Reporter. Except as elsewhere required, the Court Reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity nor to furnish such statement of facts prior to the payment therefor.

1.18 ORDERS AND JUDGMENTS

Unless the Court directs otherwise, counsel shall submit proposed orders, decisions, and judgments to the Court for approval and signature within thirty (30) days after rendition or announcements of settlement. Counsel shall serve copies on all counsel. Failure to submit timely a proposed judgment or order disposing of the entire case may be considered as grounds to dismiss for want of prosecution under Rule 1.14.

PART TWO
COUNTY COURT

2.1 RULES APPLICABLE TO COUNTY COURT

(a) These rules are applicable to the County Court of this County in all cases on the Civil and Probate Dockets of said Court.

(b) The rules governing the practice in civil cases in the District Court of Willacy County, as contained in part one of these rules, shall apply to the County Court. In such cases, references to the District Clerk shall apply to the County Clerk.

PART THREE
GENERAL AND MISCELLANEOUS

3.1 AUTHORITY FOR RULES

These rules are adopted under and by virtue of Texas Rule of Civil Procedure 3a, and the constitutional, statutory, and inherent powers of the Courts to regulate proceedings before them and to provide for the orderly and efficient dispatch of litigation.

3.2 REPEAL OF FORMER RULES

All previous local rules governing practice in the Civil District Courts and County Court of Willacy County are hereby repealed, other than any Local Rules for telefax and electronic filing referenced in Local Rule 1.15(c).

3.3 TITLE AND CITATION

These rules shall be known as the "Willacy Civil District Court and County Court Rules," and particular rules may be cited thus: "Willacy Civil Court Rule 3.3."

3.4 PARTIAL CIVIL INVALIDITY

In the event any of the foregoing rules or any part thereof is held to be invalid for any reason, such invalidity shall not affect the validity of the remaining rules and parts of rules, all of which have been separately considered and adopted.

3.5 "COUNSEL", "LAWYERS", "ATTORNEY OF RECORD"

The terms, "Counsel", "Lawyer", and "Attorney of Record" as used in theses rules shall, in the event a party appears pro se, i.e. without counsel, apply to individual litigants in the same fashion as if they were members of the Bar of the State of Texas.

3.6 CONDUCT OF THE GENERAL PUBLIC

The general public, witnesses, jurors, and parties attending court shall not:

a. bring food or beverages into the courtroom.
b. smoke in the courthouse.
c. prop feet on the furniture.
d. walk through the courtroom while the court is in open session.

e. by facial gesture or other nonverbal conduct exhibit approval or disapproval of witness, testimony, counsel's argument, the judge's ruling, or other events of proceedings.

f. have in their possession cell phones, pagers, PDA's, or personal music devices able or emit audible sounds in the courthouse.

3.7 CONDUCT OF COUNSEL

Counsel shall:

a. address their statements to the Court and not each other during court proceedings, except by leave of Court.

b. be prompt in attending Court.

c. dress appropriately in the decorum of the Court.

d. prevent their cell phones, pagers, PDA's or personal music devices to ring or emit audible sounds in the courtroom.

e. not address each other or the judge by their first name or nicknames.

f. stand while addressing the judge, preferable from counsel table. Counsel and their staff shall remain at counsel table while examining witnesses, except when necessary to handle or display evidence.

g. refrain from inviting clients or witnesses to the judge's chambers, except by the judge's permission.

h. observe the disciplinary rules and ethical canons concerning *ex parte* contact with the Court and its staff concerning pending cases, discussions with the media concerning pending cases, and civility to opposing counsel.

i. avoid leaning on the bench during court proceedings and conferences.

j. advise clients and witnesses of proper court decorum.

k. not interrupt the judge or opposing counsel, except when necessary to make a proper objection or otherwise protect a party's rights.

l. avoid "speaking objections" or legal arguments on objections before the jury, except by leave of Court.

m. not address a juror directly or individually after voir dire until after the jurors are released from service, except by the Court's permission.

n. because they are potentially disruptive of court proceedings and pose possible security risks, telephones, beepers, cameras, recording devices or other electronic devices shall not be brought into the courtroom without the expressed permission of the Court. Anyone that brings these items into the courtroom without the expressed permission of the Court is in violation of this order and subject to direct contempt of the Court and possible forfeiture of said item.

3.8 CONDUCT OF OFFICERS OF THE COURT, INCLUDING COUNSEL

a. All counsel are admonished to respect the letter and spirit of all canons of ethics, including particularly those dealing with testimony by counsel participating in the trial, discussion of cases with representatives of the press, T.V. or radio and discussion of the facts or law of the case with the Court outside of the Courtroom and not in the presence of opposing counsel. The Court may enforce the same by appropriate action.

b. The lawyers, the Judge, and all officers of the Court shall be prompt at all sessions and in dispatch of all Court business.

c. All lawyers and Court officials shall dress in keeping with proper Courtroom decorum and all male lawyers and Court officials shall wear coats and ties while in attendance of the Court; provided, however, that Judicial Discretion be exercised otherwise in special situations. No attorneys may wear jeans while in attendance of the Court.

d. While the Court is in session, all remarks of counsel shall be addressed to the Court, and not to opposing counsel or to the Judge as an individual.

e. In addressing the Judge, lawyers shall at all times rise and remain standing to address the Judge from the position at the counsel table. They shall remain standing to address the Judge from their position at the counsel table. They shall remain at counsel table while interrogating witnesses, except as may be necessary in handling or displaying of exhibits or demonstrating evidence.

f. The Judge shall be respectfully and properly addressed at all times; all objections and legal arguments by counsel shall be directed to the Judge and not to opposing counsel, and counsel shall be impersonal in addressing the Judge.

g. All counsel are requested to use the conference room for consultation with clients and witnesses and are further requested to refrain from inviting clients and witnesses into the Court Clerk's office and the Chambers except upon the discretion of the Judge. The telephone in the lawyers' lounge is provided for the attorneys to use on Court business only.

h. When the Judge addresses counsel it shall be impersonally, as by "Counsel" or by the last name, rather than by first name.

i. Lawyers shall never lean on the bench or engage the Judge in a confidential manner.

j. Lawyers shall advise their clients and witnesses of the proper courtroom decorum and attire, and seek their full cooperation therewith. This will prevent possible embarrassment to the Judges as well as to the lawyers and laymen.

k. After jury voir dire, no attorney shall ever address the jury or a juror individually or by name without having first obtained leave of Court.

During trial, attorneys should not exhibit familiarity with witnesses, jurors or opposing counsel, and to this end, the use of first names should be avoided. During jury argument, no attorney should ever address a juror individually or by name.

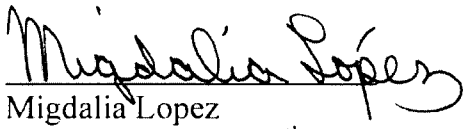
l. The trial attorney should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when necessary to protect his client's rights on the record, and should respectfully await the completion of the Court's statement or opinion before undertaking to point out objectionable matter.

m. There will be no arguments on objections in the presence of the Jury. If counsel desire to argue his or her point after making objection, or being overruled on an objection, he or she shall ask the Court to exclude the jury before proceeding with such argument. However, argument will be permitted on objections at the discretion of the Court.

3.9 ADOPTION AND EFFECTIVE DATE

These rules shall be effective in all Courts to the extent applicable on and after September 28, 2011.

SIGNED



Migdalia Lopez
Presiding Judge, 197th Judicial District Court
(Cameron & Willacy Counties)

John F. Gonzales, Jr.
County Judge

FILED AND RECORDED

SUPREME COURT APPROVAL

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9023

APPROVAL OF AMENDED LOCAL RULES FOR THE CIVIL COURTS OF DALLAS COUNTY

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following amended local rules for the Civil Courts of Dallas County.

Dated: January 15, 2014

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

LOCAL RULES of THE CIVIL COURTS OF DALLAS COUNTY, TEXAS--
including revisions approved by the Texas Supreme Court

PART I - FILING, ASSIGNMENT AND TRANSFER

PART II- MOTIONS AND DISCOVERY

DEPOSITION PART III - TRIALS

PART IV- ATTORNEYS

DALLAS CIVIL COURT RULES

PART I- FILING, ASSIGNMENT AND TRANSFER

1.01. RANDOM ASSIGNMENT

All civil cases filed with the District Clerk shall be filed in the Civil District Courts in random order.

1.02. COLLATERAL ATTACK

Every proceeding seeking to attack, avoid, modify, or set aside any judgment, order or decree of a Civil Court of Dallas County shall be assigned to the Court in which such judgment, order or decree was rendered.

1.03. ANCILLARY PROCEEDINGS (revised)

Every proceeding ancillary to a civil action shall be assigned or transferred to the Court in which the suit to which the proceeding is ancillary is pending.

1.04. MOTION TO CONSOLIDATE

Every motion for consolidation or joint hearing of two or more cases under Texas Rules of Civil Procedure ("TRCP") Rule 174(a), shall be filed in the earliest case filed with notice to the later filed Court and all parties in each case.

1.05. TRANSFER BY LOCAL ADMINISTRATIVE JUDGE

The Local Administrative Judge may, upon request of a Court, transfer any case from that Court to any other Court having subject matter jurisdiction of the case. The selection of the transferee Court shall be by random or serial selection.

1.06. RELATED CASES

Whenever any pending case is so related to another case previously filed in or disposed of by another Court of Dallas County having subject matter jurisdiction that a transfer of the later case to such other Court would facilitate orderly and efficient disposition of the litigation, the Judge of the Court in which the earlier case is or was pending may, upon notice to all affected parties and Courts, transfer the later case to such Court.

1.07. CASES SUBJECT TO TRANSFER (revised)

Without limitation, the following types of cases shall be subject to transfer under Local Rule 1.06:

a. Any case arising out of the same transaction or occurrence as an earlier case, particularly if the earlier case was dismissed by plaintiff before final judgment.

b. Any case involving a plea that a judgment in the earlier case is conclusive of any of the issues of the later case by way of res judicata or estoppel by judgment, or any pleading that requires a construction of the earlier judgment or a determination of its effect.

c. Any suit for declaratory judgment regarding the alleged duty of an insurer to provide a defense for a party to the earlier suit.

d. Any suit concerning which the duty of an insurer to defend was involved in the earlier suit.

e. Any application for approval of a transfer of structured settlement payment rights in which the original settlement pertained to a suit in a court of Dallas County, or in which a previous application involving the same transferor was filed in a court of Dallas County.

1.08. DISCLOSURE REGARDING CASES SUBJECT TO TRANSFER

The attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the Judges of the respective Courts in which the earlier and later cases are assigned of the pendency of the later case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, case number and Court the related case. If no such disclosure is made, the signature of the attorney filing the case on the original pleading shall be that attorney's certification that the case is not so related to another previously filed case. The attorney answering any filed case shall point out in the original defensive pleading or in a separate simultaneous filing any failure of the attorney filing the case to have made a proper and accurate disclosure. In the absence of any such plea, the signature of the attorney filing the original defensive pleading shall be that attorney's certificate either that the disclosure of the attorney filing the case was accurate, or, if no disclosure was made by the attorney filing the case, that the case is not so related to a prior filed or disposed of case.

1.09. SEVERANCE

Whenever a motion to sever is sustained, the severed claim shall be filed as a new case in

the same Court and shall be given the next number available at the filing desk in the office of the Clerk. Unless otherwise ordered, the Court assignment otherwise designated by that number shall be disregarded. Before the severed claim is assigned a new cause number, the attorney for plaintiff in the new cause shall meet the Clerk's requirement concerning deposit for costs.

1.10. SEVERANCE OF MULTIPLE PLAINTIFFS

If a single pending case with multiple plaintiffs includes causes of action that do not arise out of a common nucleus of operative facts, the Court may on its own motion or the motion of any party order that the claims be severed in accordance with Local Rule.

1.11. TRANSFER OR APPEAL TO SPECIFIC DALLAS COURT INEFFECTIVE

Whenever a case is transferred to Dallas County by a Court of another county, or is appealed, and the order of transfer or the appeal specifies the particular Court to which the case is transferred, such specification shall be disregarded and the case shall be assigned in the manner provided in Local Rule 1.01, and shall thereafter be subject to the provisions of this Part.

1.12. PAYBACK OF TRANSFERRED CASES

Any Court receiving a case transferred by judicial order may transfer a case of comparable age and complexity to the transferor Court.

1.13. SUGGESTION OF BANKRUPTCY

Any party to a pending case shall promptly notify the Court of the filing by any other party of a petition in bankruptcy. Such notice shall be made by filing a Suggestion of Bankruptcy with the clerk of the Court and serving copies on all counsel of record. The Suggestion of Bankruptcy shall be filed as soon as practicable, but in no event more than 20 days after a party receives notice of the filing of a petition in bankruptcy by any other party.

PART II - MOTIONS AND DISCOVERY

2.01. FILING WITH THE COURT IN EMERGENCY ONLY (revised)

a. Except in emergencies when the Clerk's office is not open for business, no application for immediate or temporary relief shall be presented to a Judge until it has been filed and assigned to a Court as provided in Local Rule 1.01.

b. Whenever immediate action of a Judge is required in an emergency when the Clerk's office is not open for business, the case shall nevertheless at the earliest practicable time be docketed and assigned to a Court as provided in Local Rule 1.01 and all writs and process shall be returnable to that Court. Any Judge taking such emergency action shall notify the Court in which such case is docketed at the earliest convenient and practical time.

2.02. APPLICATION FOR TRO AND OTHER EX PARTE ORDERS

a) Counsel presenting any application for a temporary restraining order or other ex parte relief shall notify the opposing party's counsel, or the opposing party if unrepresented by counsel in the present controversy, and provide opposing counsel or party with a copy of the application and proposed order at least 2 hours before the application and proposed order are to be presented to the Court for decision, except as provided in subparagraph b) hereof.

b) Compliance with the provisions of subparagraph a) hereof is not required if a verified certificate of a party or a certificate of counsel is filed with the application,

1) That irreparable harm is imminent and there is insufficient time to notify the opposing party or counsel; or

2) That to notify the opposing party or counsel would impair or annul the court's power to grant relief because the subject matter of the application could be accomplished or property removed, secreted or destroyed, if notice were required.

c) Counsel presenting any application for a temporary restraining order shall at the time the application is presented further certify that to the best of counsel's knowledge, the case in which the application is presented is not subject to transfer under Local Rule 1.06. If the case is subject to transfer, counsel shall fully advise the Court of the circumstances, particularly as to whether there has been any previous application for the same or similar relief *or* whether the relief sought will conflict with any other previous order, and the Judge to whom the application is presented may decline to act and refer the application or the entire case to the Judge of the Court to which the earlier related case is assigned.

2.03. JUDGMENTS AND DISMISSAL ORDERS

Within 30 days after the Court has announced a verdict or judgment or the Court receives a written announcement of settlement from either party or from a mediator, counsel shall submit to the Court a proposed judgment or dismissal order, unless ordered otherwise. Failure to so furnish the Court with such a proposed judgment or dismissal order will be interpreted to mean that counsel wish the Court to enter an Order of Dismissal with prejudice with costs taxed at the Judge's discretion.

2.04. FILING OF PLEADINGS, MOTIONS, BRIEFS, ORDERS, AND OTHER PAPERS (revised)

All pleadings, motions, briefs, orders and other papers, including exhibits attached thereto, when offered for filing or entry, shall be descriptively titled. Each page of each instrument shall, in the lower margin thereof, be consecutively numbered and titled; e.g., "Plaintiffs Original Petition- Page 2." Page numbers should continue in sequential order through the last page of any attachments or exhibits (i.e. should not re-start with each succeeding document). Any reference to an attachment shall include the sequential page number where the reference can be found. Orders and Judgments shall be separate documents completely separated from all other papers. If documents not conforming to this Local Rule are offered, the Clerk before receiving them shall require the consent of a

Judge.

2.05. SERVICE OF PAPERS FILED WITH THE COURT

Other than original petitions and any accompanying applications for temporary restraining order, any documents filed with the Court that relate to requests for expedited relief or to matters set for hearing within seven days of filing must be served upon all opposing parties in a manner that will ensure receipt of the papers by them on the same day the papers are filed with the Court or Clerk.

2.06. UNCONTESTED OR AGREED MATTERS (revised)

The Court does not require a separate motion or hearing on agreed matters, except for continuances in cases over one year old or as otherwise provided. All uncontested or agreed matters should be presented with a proposed form of order and should reflect the agreement of all parties either (a) by personal or authorized signature on the form of order, or (b) in the certificate of conference on the motion. This Rule does not apply to cases involving financial settlements to minors.

2.07. CONFERENCE REQUIREMENT (revised)

a. No counsel for a party shall file, nor shall any clerk set for hearing, any motion unless accompanied with a "Certificate of Conference" signed by counsel for movant in one of the forms set out in Rule 2.07(c).

b. Prior to the filing of a motion, counsel for the potential movant shall personally attempt to contact counsel for the potential respondent to hold or schedule a conference to resolve the disputed matters. Counsel for the potential movant shall make at least three attempts to contact counsel for the potential respondent. The attempts shall be made during regular business hours on at least two business days.

c. For the purpose of Rule 2.07(a), a "Certificate of Conference" shall mean the appropriate one of the following four paragraphs (verbatim):

(1)

"Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to resolve those matters presented.

Certified to the Day of_, 20 by"

, or (2)

"Counsel for movant has personally attempted to contact the counsel for respondent to resolve the matters presented as follows:

(Dates, times, methods of contact, results)

Counsel for the movant has caused to be delivered to counsel for respondent and counsel for respondent has received a copy of the proposed motion. At least one attempt to contact the counsel for respondent followed the receipt by counsel for respondent of the proposed motion. Counsel for respondent has failed to respond or attempt to resolve the matters presented.

Certified to the Day _ of_, 20 by"

(3)

"Counsel for movant has personally attempted to contact counsel for respondent, as follows:

(Dates, times, methods of contact, results)

An emergency exists of such a nature that further delay would cause irreparable harm to the movant, as follows:

(details of emergency and harm).

Certified to the Day of _, 20 by"

, or (4) I, the undersigned attorney, hereby certify to the Court that I have conferred with opposing counsel in an effort to resolve the issues contained in this motion without the necessity of Court intervention, and opposing counsel has indicated that he does not oppose this motion.

Certified to the Day of_, 20 by"

d. Sections (a) and (b) of this Rule do not pertain to dispositive motions, motions for summary judgment, default judgments, motions to confirm arbitration awards, motions to exclude expert testimony, pleas to the jurisdiction, motions to designate responsible third parties, motions to strike designations of responsible third parties, motions for voluntary dismissal or nonsuit, post-verdict motions and motions involving service of citation.

2.08. SUBMISSION OF PROPOSED ORDERS BY COUNSEL

Counsel seeking affirmative relief shall be prepared to tender a proposed order to the court at the commencement of any hearing on any contested matter.

Should the court notify counsel of its decision at any time following the hearing on any contested matter and direct counsel to prepare one or more orders for submission to the court any such order shall be tendered to opposing counsel at least two working days before it is submitted to the court.

The opposing party must either approve the proposed order as to form or file objections in writing with the court. If an order is not approved as to form and no objections are

filed within five days of the submission of the proposed order to the court, the proposed order is deemed approved as to form. Nothing herein prevents the court from making its own order at any time after the hearing in accordance with the Texas Rules of Civil Procedure.

2.09. BRIEFS, RESPONSES AND REPLIES (revised)

Except in case of emergency, briefs, responses and replies relating to a motion (other than for summary judgment) set for hearing must be served and filed with the Clerk of the Court no later than three working days before the scheduled hearing. Briefs in support of a motion for summary judgment must be filed and served with that motion; briefs in opposition to a motion for summary judgment must be filed and served at or before the time the response is due; reply briefs in support of a motion for summary judgment must be filed and served no less than three days before the hearing. Briefs not filed and served in accordance with this paragraph likely will not be considered. Any brief that is ten or more pages long must begin with a summary of argument.

2.10. DEFAULT PROVE-UPS

Upon request by the Court, default prove-ups may be made through affidavits and without hearing.

2.11. NOTICE OF HEARING (new)

A party who sets for hearing any motion or other matter must serve written notice of such setting on all parties, with a copy to the Clerk of the Court, within one business day of receipt of such setting. Nothing in this rule shall be construed to shorten any notice requirement in the Texas Rules of Civil Procedure or other rule or statute.

2.12. EFFECT OF MOTION TO QUASH DEPOSITION

a. For purposes of this rule, the date of delivery of a notice of deposition or motion to quash a notice of deposition is the date of actual delivery to counsel or a party, unless received after 5:00 p.m. in which case the date of delivery is deemed to be the next day on which the courthouse is open. Delivery by mail is presumed to be the third business day following mailing.

b. The filing of a motion to quash a deposition with the district clerk and service on opposing counsel or parties in accordance with Local Rule 2.05, if done no later than the third day the courthouse is open after delivery of the notice of deposition, is effective to stay the deposition subject to determination of the motion to quash. The filing of a motion to quash does not otherwise stay a deposition.

c. The parties may, by Rule 11 agreement, agree to proceed with a partial deposition while still reserving part or all of the objections made in the motion to quash.

PART III- TRIALS

3.01. REQUESTS TO CONTINUE TRIAL DATE

a. Unless otherwise permitted by Court policy, no request to pass, postpone or reset any trial shall be granted unless counsel for all parties consent, or unless all parties not joining in such request or their counsel have been notified and have had opportunity to object; provided, however, that failure to make an announcement under Local Rule 3.02 shall constitute that party's consent to pass, postpone, reset or dismiss for want of prosecution any case set for trial the following week.

b. After a case has been on file for one year, it shall not be reset for a party except upon written motion for continuance, personally approved by the client in writing, and granted by the Court. Except as provided by statute, no party is entitled of right to a "pass" of any trial setting.

3.02. ANNOUNCEMENTS FOR TRIAL

a. In all cases set for trial in a particular week, counsel are required to make announcements to the Court Administrator on the preceding Thursday and in any event, no later than 10:30 A.M. on the preceding Friday concerning their readiness for trial. Such announcement shall include confirmation of compliance with Local Rule 2.08, if such compliance is required in the case. Any unqualified announcement of "ready" or "ready subject to" another Court engagement may be made to the Court Administrator in person or by telephone.

b. If Plaintiff does not make an announcement by 10:30 A.M. on Friday preceding the week in which the case is set for trial, the Court may dismiss the case for want of prosecution.

c. If one or more Defendants do not make an announcement by 10:30 A.M. on Friday preceding the week in which the case is set for trial, the Court may deem said Defendant(s) to be ready and may proceed with the taking of testimony, with or without the presence of said Defendant or Defendants or their respective counsel.

d. Counsel shall notify all parties of their announcement.

e. An announcement of "ready" shall be taken as continuing throughout the week in which the case is set for trial except to the extent that such announcement is qualified when it is made or later by prompt advice to the Clerk.

f. Whenever a non-jury case is set for trial at a time other than Monday, counsel are required to appear and make their announcements at the day and hour specified in the notice of setting without further notification.

3.03. CONFLICTING ENGAGEMENTS OF COUNSEL

a. Where counsel has more than one trial setting in a case on call in the Courts of Dallas County in the same week, the Court in which the case is first reached for trial shall have priority. If cases are reached in more than one Court at the same time and day, any case specially set case has priority; if no case is specially set, the older case shall have priority.

b. Where counsel for either party has a conflicting trial setting in another county, the Court may, in its discretion, defer to the out of county court and hold the case until the trial in the other county is completed.

c. Where counsel has a conflicting engagement in any Court of the United States or in any Appellate Court, the case in Dallas County may be held until such engagement has been completed.

3.04. CARRYOVER CASES

If a case is not tried within the week, the Court may with prior written notice carry the case from week to week. Counsel are required to answer concerning their readiness for trial in these cases in the normal manner for the subsequent week.

3.05. COUNSEL TO BE AVAILABLE

Unless released by the Court, during the week a case is set for trial counsel are required to be available upon a telephone call from the Court Administrator. Telephone notice to counsel's office or such other telephone number as counsel may provide to the Court Administrator will be deemed actual notice that a case is called for trial. Counsel shall promptly advise the Court Administrator of any matter that arises during the week that affects counsel's readiness or availability for trial. If counsel is engaged during the week in trial in another Court, whether in Dallas County or elsewhere, counsel shall advise the Court Administrator upon completion of such other trial.

PART IV - ATTORNEYS

4.01. ATTORNEY CONTACT INFORMATION (revised)

Every pleading of a party shall include the information required by Tex. R. Civ. P. 57. Attorneys are required to notify the District Clerk of any change in address, email address, telephone, or fax number. Any notice or communication directed to the attorney at the address, telephone, or fax number indicated in the records of the District Clerk will be deemed received.

4.02. WITHDRAWAL OF COUNSEL

No attorney of record shall be permitted to withdraw from any case without presenting a motion and obtaining from the Court an order granting leave to withdraw. When withdrawal is made at the request of or on agreement of client such motion shall be accompanied by the client's written consent to such withdrawal or a certificate by another lawyer that he has been employed to represent the client in the case. In the event the client has not consented, a copy of such motion shall be mailed by certified and regular first class mail to the client at his last known address, with a letter advising that the motion will be presented to the Court on or after a certain hour not less than ten days after mailing the letter, and that any objection to such withdrawal should be made to the Court in writing before such time. A copy of such letter shall be attached to the motion. A copy of the motion shall be served upon all counsel of record. Unless allowed in the discretion of the Court, no such motion shall be presented within 30 days of the trial date or at such

time as to require delay of the trial. After leave is granted, the withdrawing attorney shall send the client a letter by regular mail with a copy of the order of the withdrawal, stating any settings for trial or other hearings and any pending discovery deadlines, and advising him to secure other counsel, and shall forward a copy of such letter to all counsel of record and to the Clerk of the Court in which the case is pending. The requirements of this Local Rule are supplemental to, and not in place of, the requirements of TRCP Rule 10.

4.03. APPEARANCE OF ATTORNEYS NOT LICENSED IN TEXAS

A request by an attorney not licensed to practice law in the State of Texas to appear in a pending case must comply with the requirements of Rule XIX of the Rules Governing Admission to the Bar.

4.04. VACATION LETTERS

Any attorney may reserve up to three weeks in any calendar year for vacations by sending a "vacation letter" for each case (with appropriate cause number and style) to the Court Coordinator and opposing counsel, reserving weeks in which no hearings, depositions, or trials are set as of the date of the letter. Once a letter is on file, no hearings, depositions, or trials may be set during the reserved weeks except upon notice and hearing.

4.05. SELF-REPRESENTED/PRO SE LITIGANTS (revised)

All requirements of these rules applicable to attorneys or counsel apply with equal force to self-represented litigants. Self-represented litigants are required to provide address, email, and telephone listings at which they can be reached by Court personnel and opposing counsel. Failure to accept delivery or to pick up mail addressed to the address provided by a self-represented litigant will be considered constructive receipt of the mailed or delivered document and may be established by a postal service receipt for certified or registered mail or comparable proof of delivery. Wherever "counsel'' is used it includes a party not represented by an attorney.

4.06. GUARDIAN AD LITEM

When it is necessary or appropriate for the Court to appoint a guardian ad litem for minor or incompetent parties or an attorney ad litem for absent parties, independent counsel, not suggested by any of the parties or their counsel, will be appointed.

4.07. LOCAL RULES AND DECORUM (revised)

All counsel and any self-represented person appearing in the civil courts of Dallas County shall by entering an appearance acknowledge that he or she has read and is familiar with these Local Rules, the Rules of Decorum set forth in Appendix 2, and The Texas Lawyers Creed set forth in Appendix 3.

Every attorney permitted to practice in these courts shall familiarize oneself with and comply with the standards of professional conduct required of members of the State Bar of Texas and contained in the Texas Disciplinary Rules of Professional Conduct, V.T.C.A. Government Code, Title 2, Subtitle G-Appendix and the decisions of any court

applicable thereto, which are hereby adopted as standards of professional conduct of these courts.

Counsel, witnesses under their control, and parties should exercise good taste and common sense in matters concerning dress, personal appearance, and behavior when appearing in court or when interacting with court personnel. All lawyers should become familiar with their duties and obligations as defined and classified generally in the Lawyers Creed, Disciplinary Rules, common law decisions, the statutes, and the usages, customs, and practices of the bar.

4.08. PRO BONO MATTERS

The civil courts of Dallas County encourage attorneys to represent deserving clients on a pro bono basis. An attorney representing a pro bono client on a matter, set for hearing on a docket for which multiple other cases are also set, may inform the appropriate court staff of his or her pro bono representation. The court will then attempt to accommodate that attorney by moving the matter towards the beginning of the docket, subject to the other scheduling needs of the court.

PART V- COUNTY COURT AT LAW MODIFICATIONS

5.01. CLERK OF THE COURTS
In all matters before the County Courts at Law wherever "District Clerk" is used, "County Clerk" is substituted.

5.02. RANDOM ASSIGNMENT
Except as required in Local Rule 6.03, all civil cases filed with the County Clerk shall be filed in the County Courts at Law in random order.

5.03. EMINENT DOMAIN CASES
The County Clerk shall assign eminent domain cases to the County Courts at Law sequentially, pursuant to statute.

5.04. COUNSEL TO APPEAR AT TRIAL

Notwithstanding Rule 3.05, in all cases in the County Courts at Law, all parties and counsel are expected to be present at all trial settings, unless advised otherwise by the Court Administrator or the Judge. Failure to so timely appear may result in the rendering of a default judgment or in dismissal or in other action required by justice and equity.

PART VI- FAMILY, JUVENILE, CRIMINAL, & PROBATE COURTS

6.01. RULES FOR OTHER COURTS
"Civil District Courts" as used herein shall mean the 14th, 44th, 68th, 95th, 101st, 116th, 134th, 160th, 162nd, 191st, 192nd, 193rd, 298th District Courts and any district courts created hereafter for Dallas County which are designated to give preference to the trying of civil cases.

"County Courts at Law" as used herein shall mean the County Court at Law No. 1, County Court at Law No. 2, County Court at Law No. 3, County Court at Law No. 4, County Court at Law No. 5, and any County Courts at Law created hereafter for Dallas County.

The Dallas Civil Court Rules set forth herein govern and affect the conduct of the Civil District Courts and the County Courts at Law only. Nothing in these Local Rules shall repeal, modify, or affect any currently existing or subsequently adopted rules of the FAMILY, JUVENILE, CRIMINAL, or PROBATE COURTS of Dallas County.

9/5/12
Hon. Eric V. Moyé, 14th District Court

9/5/12
Hon. Carlos Cortez, 44th District Court

9-5-12
Hon. Martin Hoffman, 68th District Court

Sept. 5 2012
Hon. Ken Molberg, 95th District Court

9-05-12
Hon. Tonya Parker, 116th District Court

9/5/12
Hon. Dale Tillery, 134th District Court

9/5/12
Hon. Jim Jordan, 160th District Court

9/5/12
Hon. Lorraine Raggio, 162nd District Court

9.5.12
Hon. Gena Slaughter, 191st District Court

9/5/12
Hon. Craig Smith, 192nd District Court

9/5/12
Hon. Carl Ginsberg, 193rd District Court

9/5/12
Hon. Emily G. Tobowlowsky, 298th District Court

9/11/12
Hon. Martin "Marty" Lowy, 101st District Court
Local Administrative District Judge

Hon. John D. Ovard, Regional Administrative Judge

9-18-12
Hon. D'Metria Benson, County Court at Law No. 1

9/5/2012
Hon. King Eiler, County Court at Law No. 2

9/7/2012
Hon. Sally Montgomery, County Court at Law No. 3

9/5/12
Hon. Ken Tapscott, County Court at Law No. 4

9/6/12
Hon. Mark Greenberg, County Court at Law No. 5

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 06-9122

APPROVAL OF LOCAL RULES FOR THE DISTRICT COURTS OF EDWARDS, KINNEY, TERRELL, AND VAL VERDE COUNTIES

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the following Local Rules for the District Courts of Edwards, Kinney, Terrell, and Val Verde Counties are approved.

In Chambers, this 21st day of August, 2006.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

EDWARDS, KINNEY, TERRELL AND VAL VERDE

63rd Judicial District
Val Verde County Judicial Center
P.O. Drawer 1089
Del Rio, Texas 78841

District Clerk 830-774-7538

Local Rules Of Practice For The 63rd
District Courts of Texas

PART ONE: RULES OF CONDUCT AND DECORUM

Rule

1. Addressing the Court.
2. Leaning on the bench.
3. Dress Code.
4. Attorneys instructions to clients of formalities of court.
5. Address Judges and opposing counsel with respect at all times.
6. Punctual attendance in Court by attorneys at all times.
7. Recording and Photographing Prohibited.
8. Cell Phones and Pagers Prohibited.
9. Reading Material.
10. Food and Drinks.

PART TWO: CIVIL RULES

SECTION ONE-SETTINGS

Rule

1. Written request for settings.
2. Agreements as to settings
3. Order on the docket, preferential settings.

SECTION TWO-JURY CASES

4. Jury.
5. Mediation.
6. Written Charge Questions.

SECTION THREE-DOMESTIC RELATIONS

7. Court Mandated Divorce Seminar.
8. Support and Temporary Spousal Alimony
9. Social Studies.

SECTION FOUR-JUDGMENTS

10. Approval as to Form
11. Signature without approval

PART THREE: CRIMINAL RULES

SECTION ONE-SETTINGS

1. Settings

SECTION TWO-PRETRIAL

Rule

2. Pretrial hearings
3. Pre-Trial motions and Plea papers.

SECTION THREE-JURY TRIAL

4. Jury trial.

SECTION FOUR-TRIAL BEFORE THE COURT

5. Waiver of jury trial

SECTION FIVE-JUDGMENTS

6. Criminal judgments

PART FOUR: GENERAL RULES

SECTION ONE-DOCKET CALL

1. Dockets
2. Time

SECTION TWO-REMOVAL OF CASE FROM DOCKET SETTING

3.. Continuance
4. Dismissal for Want of Protection

06 - 9122

LOCAL RULES OF PRACTICE FOR THE 63RD DISTRICT COURTS OF TEXAS

Pursuant to the authority granted District Courts under Rule 3a, T.R.C.P., and art. 33.08, C.C.P., to promulgate Rules of Practice for conducting the business of District Courts, the rules, suggestions and procedures set out below will be in effect in these courts unless subsequently modified, changed or amended.

PART ONE: RULES OF CONDUCT AND DECORUM

Rule 1. When addressing the Court, lawyers shall at all times promptly rise and remain standing at their position at the counsel table, and shall not approach the bench except with permission or on request of the Court. Lawyers shall remain seated at counsel table while interrogating a witness, except as may be necessary in the handling or display of exhibits or demonstrative evidence. Any person who is physically disabled to the extent that he/she can not comply with this rule shall be excused therefrom.

Rule 2. Leaning on the bench will not be permitted.

Rule 3. In the Courtroom, all attorneys and court officials shall dress in keeping with the dignity required for court proceedings. Parties, and all men attending court shall tuck in their shirts, and remove their hats, and women are to wear a dress, slacks or other appropriate clothing.

Rule 4. Lawyers shall advise their clients of the formalities of the court and obtain cooperation therewith, thereby avoiding embarrassment to the court as well as to other persons.

Rule 5. Judges and opposing counsel should be respectfully addressed at all times. All objections and legal arguments by counsel shall be directed to the judge and not to opposing counsel.

Rule 6. All lawyers shall be prompt in attendance at all court sessions. All lawyers should make whatever arrangements are necessary to comply with this rule.

Rule 7. During court sessions and recesses between sessions of Court no broadcasting, television, recording(audio or visual) or photographic (nor equipment capable of doing the same) shall be allowed in the Courtroom or on the same floor where the courtroom is located, unless the

Court grants permission to possess and use such equipment at such time and place.

Rule 8. All pagers and cell phones must be turned off upon entering the Courtroom.

Rule 9. No reading of newspapers, magazines and/or books will be allowed in the courtroom, except for officers of the Court, and only then, inside the bar.

Rule 10. No food or drinks are allowed in the Courtroom, except for officers of the Court, and then only coffee or water will be allowed.

PART TWO: CIVIL RULES

SECTION ONE-SETTINGS

Rule 1. All cases, contested or uncontested, MUST be set by way of WRITTEN MOTION WITH ORDER ATTACHED. Attorneys requesting settings will notify the opposing counsel of such motion by certified mail or by hand delivery at least ten (10) days before the date of such setting. In addition, said request shall include an estimated length of time necessary for the hearing. If opposing counsel cannot go to trial on such date, he/she shall immediately notify the Court coordinator in writing stating the reason he/se cannot go to trial.

ONLY the Judge or Court Coordinator can set a case. Motions to Set should be sent to the Court at P.O. Drawer 1089, Del Rio, Texas 78841-1089.

Rule 2. A contested case may be set for trial on the merits or for pre-trial hearing by agreement of counsel and approved by the Court, or may be set by order of the Court.

Rule 3. All cases shall be set in the same sequence as the dates of the orders setting the cases are filed, provided, however, for good cause, after motion and hearing, a case may be advanced on the docket by order of the Court.

SECTION TWO-JURY CASES

Rule 4. A jury demand must be filed and a jury fee paid prior to obtaining a setting on the

jury docket.

Rule 5. Unless waived by the Judge, a Certificate of Completion of Mediation must be on file no later than the Thursday prior to the date the jury is to report .

Rule 6. In all contested civil jury cases, before announcements of "Ready", counsel shall furnish the Court with all written questions anticipated for the charge of the Court.

SECTION THREE-DOMESTIC RELATIONS

Rule 7. A certificate of completion of a court mandated Family Stabilization Seminar or pre-approved divorce seminar must be on file prior to the parties obtaining a divorce. The course is required for both parties in domestic relations cases involving minor children, filed after May 1, 2005. Court mandated divorce seminars include "For Kids Sake" "Putting Kids First" "Kids in Divorce Situations" or any other program approved by the District Court.

Rule 8.

Before any contested trial or hearing involving child support or temporary spousal alimony, each party shall prepare and file with the Court a financial information statement.

Unless waived by the Court, all child support payments shall be made through the Child Support Disbursement Unit, San Antonio, Texas and forwarded to the Obligee. Temporary spousal support is to be made through the office of the District Clerk.

Rule 9.

Arrangements for the preparation of a social study shall be made in all adoptions before the case will be set for trial.

In contested domestic relation cases involving custody of children wherein a social study is requested, the anticipated costs of preparation must be deposited with the District Clerk or other satisfactory arrangements made to guarantee payment to the person preparing the social study.

Without such arrangements, the preparation of a social study will not be ordered.

SECTION FOUR-JUDGMENTS

Rule 10. All judgments should be approved by all attorneys involved in the case before being presented to the Court for signature.

Rule 11. When a party prepares a judgment and submits the judgment for approval by the Court, a copy of that judgment must be sent to opposing counsel. If no objection to the judgment is filed with the Court by opposing counsel within ten (10) days, the judgment will be signed.

PART THREE: CRIMINAL RULES

SECTION ONE-SETTINGS

Rule 1. All criminal cases shall be set ONLY by Court Order or by administrative notice of setting by the Court Coordinator. If for good cause defense counsel cannot go to trial on such date, he shall, file a Motion For Continuance within five (5) days of receipt of the setting notice, and advise the Court Coordinator in writing stating such reason for continuance.

SECTION TWO-PRETRIAL

Rule 2. All cases shall be set for a pretrial hearing. Non-evidentiary pretrial matters will be heard but not recorded by a court reporter, unless the court orders that a record be made.

Evidentiary pretrial motions will be heard prior to trial unless otherwise ordered by the Court. A record will be made of all evidentiary pre-trial hearings.

Rule 3. All pretrial motions shall be filed in accordance with the Code of Criminal Procedure.

All plea papers shall be prepared in advance of trial settings.

SECTION THREE-JURY TRIAL

Rule 4. After pretrial hearing, all cases will be set for jury trial unless the defense attorney

request a court trial or a date for a plea of guilty.

SECTION FOUR-TRIAL BEFORE THE COURT

Rule 5. If defense request a court trial, a jury waiver must be filed with the court. Said waiver is to be signed and sworn to by defendant and approved by the Court.

SECTION FIVE-JUDGMENTS

RULE 6. The Court shall prepare all judgments in criminal cases.

PART FOUR: GENERAL RULES

SECTION ONE-DOCKET CALL

Rule 1. The trial dockets of the 63rd District Court of Edwards, Kinney, Terrell and Val Verde are to be in accordance with the published schedule on file and available for copying in the offices of the District Judge and as posted at the District Courtroom.

Rule 2. Docket call is at 9:00 a.m. in Val Verde and Kinney Counties, 9:30 a.m. in Edwards County, and 10:00 a.m. in Terrell County unless otherwise noticed in writing.

SECTION TWO-REMOVAL OF CASE FROM DOCKET SETTING

Rule 3. Except as provided herein, after a case is set by written order or administrative notice of setting, it cannot be removed from the docket unless a written Motion for Continuance is filed five (5) days prior to setting date and approved by the Court, by written mutual agreement, by dismissal, or by other agreed final disposition filed with the District Clerk prior to the setting date.

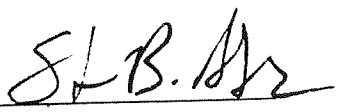
Rule 4. If a case is set by written order or by administrative notice of setting, and not otherwise removed from the docket setting by the rules established herein, the Court will call the case and if no appearance or announcement is made, the case will be dismissed for want of prosecution.

06 - 9122

Thomas L. Lee

Judge Presiding, 63rd Judicial District

Approved:



Stephen B. Ables
Presiding Judge, Sixth Administrative District

Approved:

_____
Texas Supreme Court

06 - 9123

COPY

VAL VERDE COUNTY JUDICIAL CENTER
100 E. BROADWAY, 2ND FLOOR
P.O. DRAWER 1089
DEL RIO, TEXAS 78841-1089

OFFICE NO. 830-774-7523
TELEFAX NO. 830-774-1359

JUDGE THOMAS F. LEE
63RD JUDICIAL DISTRICT OF TEXAS
EDWARDS, KINNEY, TERRELL, and VAL VERDE COUNITES

June 20, 2006

Mr. Jody Hughes
Rules Clerk
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2248

Re: Texas Rules of Court-Local

Dear Mr. Hughes:

Pursuant to our conversation last Thursday, concerning local rules to be applied in the counties of the 63rd Judicial District, I enclose those rules for your examination. These rules have been approved by Judge Ables, Administrative Judge for the Sixth Administrative Region. Under the provisions of Rule 3a of the Texas Rules of Court-State, the local rules must be approved by the Texas Supreme Court before they go on to West Publishing Company and for that reason I am submitting them to you for examination. If I can provide any additional information on the matter, please let me know.

Sincerely,

Thomas F. Lee

Thomas F. Lee
63rd District Judge

06 - 9122

Harris County
District Courts

RULES of the CIVIL TRIAL DIVISION

Harris County District Courts

4/28/2014

Rule 1. OBJECTIVE OF RULES.

The objective of the rules of the Civil Trial Division of the District Courts of Harris County is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law and established rules of procedural law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense, both to the litigants and to the state, as may be practicable, the rules shall be applied to ensure that, so far as reasonably possible, all matters are brought to trial or final disposition in conformity with the following standards:

(a) Civil jury cases within 18 months from appearance date;

(b) Civil non-jury cases within 12 months from appearance date.

Rule 2. REPORTS TO ADMINISTRATIVE JUDGE.

The district clerk shall supply to the Administrative Judge of the Civil Trial Division, on a monthly basis, information concerning the number of filings, dispositions, trials and other judicial activities in each court in the Civil Trial Division.

Rule 3. FLOW OF CASES.

3.1 FILING AND ASSIGNMENT. On being filed, a case in the Civil Trial Division shall be assigned randomly to the docket of one of the courts in that Division. Once assigned to a court, a case will remain on
the docket of that court for all purposes unless transferred as provided in Rule 3.2.

3.2 TRANSFER.

3.2.1 *Prior Judgment*. Any claim for relief based upon a prior judgment shall be assigned to the court of original judgment.

3.2.2 *Prior filings*. Any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous filing involving substantially-related parties and claims shall be assigned by the Administrative Judge of the Civil Trial Division to the court where the prior matter was pending.

3.2.3 *Consolidation*.

(a) *Consolidation of Cases*. Subject to subpart c, a motion to consolidate cases must be heard in the court where the first filed case is pending. If the motion is granted, the consolidated case will be given the number of the first filed case and assigned to that court.

(b) *Consolidation of Discovery*. Subject to subpart c, a motion to consolidate discovery in separate cases must be heard in the court where the first filed case is pending. If the motion to consolidate discovery is granted, the case will not transfer, but the case management will be conducted by the consolidating court.

(c) *Consolidation to Special Dockets*. Special dockets for the management of multi-court cases may be created by order of the Administrative Judge of the Civil Trial Division according to policies approved by the judges of the Civil Trial Division.

3.2.4 Severance. If a severance of a claim or a defendant in a case is ordered, the new case will be assigned to the court where the original case pends, bearing the same file date and the same number as the original case with a letter designation. If a severance of multiple plaintiffs or intervenors in a case is ordered, the new case(s) may be randomly reassigned by the Administrative Judge of the Civil Trial Division. If not randomly reassigned, the case(s) will stay in the same court. When a severed case has previously been consolidated from another court, the case shall upon severance be assigned to the court from which it was consolidated.

3.2.5 *Agreement*. Any case may be transferred from one court to another court by written order of the Administrative Judge of the Civil Trial Division or by written order of the judge of the court from which the case is transferred; provided, however, that in the latter instance the transfer must be with the written consent of the court to which the case is transferred.

3.2.6 *Presiding for Another*. In all cases where a court presides for another court, the case shall remain pending in the original court. If available, the judge who signed an order shall preside over any motion for contempt of that order, except as otherwise provided in Sec. 21.002, Tex. Gov. Code.

3.2.7 *Administrative Transfers*. The Administrative Judge of the Civil Trial Division may transfer cases between courts or may assign cases from one court to another court for hearing due to illness, trial schedule, or other sufficient reasons.

3.2.8 *Improper Court*. If a case is on the docket of a court by any manner other than as prescribed by these rules, the Administrative Judge of the Civil Trial Division shall transfer the case to the proper court.

3.3 MOTIONS.

3.3.1 *Form*. Motions shall be in writing and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument, unless the entire motion, order, signature lines and certificate of service are all on one page.

3.3.2 *Response*. Responses shall be in writing and shall be accompanied by a proposed order. Failure to file a response may be considered a representation of no opposition.

3.3.3 *Submission*. Motions may be heard by written submission. Motions shall state Monday at 8:00 a.m. as the date for written submission. This date shall be at least 10 days from filing, except on leave of court. Responses shall be filed at least two working days before the date of submission, except on leave of court.

3.3.4 *Oral Hearings*. Settings for oral hearings should be requested from the court clerk. The notice of oral hearing shall state the time and date.

3.3.5 *Unopposed Motions*. Unopposed motions shall be labeled "Unopposed" in the caption.

3.3.6 *Extension of Certificates of Conference*. The certificates of conference required by the Texas Rules of Civil Procedure are extended to all motions, pleas and special exceptions except summary judgments, default judgments, agreed judgments, motions for

voluntary dismissal or non-suit, post-verdict motions and motions involving service of citation.

3.4 TRIALS.

3.4.1 *Manner of Setting*. Cases shall be set for trial by order of the court.

3.4.2 *Date of Setting*. Cases shall be set for trial for a date certain. If a case is not assigned to trial by the second Friday after the date it was set, whether because of a continuance or because it was not reached, the court shall reset the case to a date certain. Unless all parties agree otherwise, the new setting must comply with all requisites of T.R.C.P. 245.

3.4.3 *Assignment to Trial.* A case is assigned to trial when counsel are called to the court to commence the jury or non-jury trial on the merits. For purposes of engaged counsel, no court may have more than one case assigned to trial at any one time.

3.4.4 *Dead Weeks*. Except with the consent of all parties, no court will assign cases to trial on the merits, or set oral hearings on motions, during:

(a) The week of the spring state or regional judicial conference

(b) The week of the State Bar Convention;

(c) The week of the Conference of the Judicial Section (September); and

(d) Any December week or weeks where the Monday of that week begins with the dates, Dec. 22-31.

3.5 ANCILLARY DOCKET.

3.5.1 *Ancillary Docket.* The ancillary docket consists of the following :

a) Applications for temporary restraining orders;

b) Motions to dissolve or modify temporary restraining orders;

c) Motions to modify the bond for a temporary restraining order;

d) Motions to authorize emergency medical treatment;

e) Requests before any suit has been filed to appoint umpires or arbitrators;

f) The following matters, when brought under Chapter 81 of the Texas Health & Safety Code:

i. Motions for orders of protective custody;

ii. Motions for orders of temporary protective custody;

iii. Motions for orders for temporary detention pending a hearing on a motion to modify an order for outpatient treatment;

iv. Appointment of attorneys for persons subject to protective custody or detention orders; and

v. Probable cause hearings.

3.5.2 *Ancillary Judge.* The Ancillary Judge is responsible for hearing all matters on the ancillary docket. Each judge will serve as Ancillary Judge for one-half of a calendar month according to a schedule adopted by the judges of the Civil Trial Division. The Ancillary Judge will be available at the courthouse on business days during regular business hours, and will provide the county switchboard with the means to locate the Ancillary Judge at all other times.

If not available to serve at any time during the term, the Ancillary Judge will designate, in writing, another judge to serve ad interim, and will notify the Administrative Judge of the Civil Trial Division, the ancillary clerk, and the county switchboard of that designation.

In the absence or unavailability of the Ancillary Judge or designee under the rule, matters requiring judicial attention will be presented to the Administrative Judge of the Civil Trial Division for ruling or assignment to another judge for ruling.

3.5.3 *Authority to Grant Ancillary Relief.* No judge other than the Ancillary Judge may grant ancillary relief without a written order from the Ancillary Judge or Administrative Judge of the Civil Trial Division. However, either the Presiding Judge or the Ancillary Judge may grant an extension of a temporary restraining order. In requests for ancillary relief, the Ancillary Judge shall hear the matters as "Judge Presiding" for the court in which the case is pending.

3.6 DISMISSAL DOCKETS. The following cases are eligible for dismissal for want of prosecution pursuant to T.R.C.P. 165a:

(a) Cases on file for more than 120 days in which no answer has been filed or is required by law;

(b) Cases which have been on file for more than eighteen months and are not set for trial;

(c) Cases in which a party or his attorney has failed to take any action specified by the court.

Rule 10. CONFLICTING ENGAGEMENTS.

10.1 **INTER-COUNTY.** The Rules of the Second Administrative Judicial Region control conflicts in settings of all kinds between a Harris County court and a court not in Harris County. The Rules of the
Second Administrative Judicial Region are available in the District Clerk's office.

10.2 **INTRA-COUNTY.** Among the trial courts sitting in Harris County:

(a) Trial/Non-Trial. Trial settings take precedence over conflicting non-trial settings; and

(b) Trial/Trial. A trial setting that is assigned takes precedence over a conflicting trial setting not yet assigned.

10.3 **WAIVER.** The court with precedence may yield.

10.4 **LEAD COUNSEL.** This rule operates only where lead counsel, as defined by T.R.C.P. 8, is affected, unless the court expands coverage to other counsel.

Rule 11. VACATIONS OF COUNSEL.

11.1 **DESIGNATION OF VACATION.** Subject to the provision of subparts .2 and .3 of this Rule, an attorney may designate not more than four weeks of vacation during a calendar year as vacation, during
which that attorney will not be assigned to trial or required to engage in any pretrial proceedings. This rule operates only where lead counsel, as defined by T.R.C.P. 8, is affected, unless the trial court
expands coverage to other counsel.

11.2 **SUMMER VACATIONS.** Written designation for vacation weeks during June, July, or August must be filed with the district clerk by May 15. Summer vacation weeks so designated will protect the
attorney from trials during those summer weeks, even if an order setting the case for trial was signed before the vacation designation was filed.

11.3 **NON-SUMMER VACATIONS.** Written designation for vacation in months other than June, July, or August must be filed with the district clerk by February 1. Non-summer vacation weeks may not run
consecutively for more than two weeks at a time. Non-summer vacation weeks so designated will not protect an attorney from a trial by an order signed before the date the designation is filed.

Rule 12. ADMINISTRATIVE JUDGE OF THE CIVIL TRIAL DIVISION.

12.1 ELECTION. The Administrative Judge of the Civil Trial Division shall be elected for a term of one calendar year by the judges of the Civil Trial Division at the regular December meeting of the judges of the Civil Trial Division. No judge may serve more than two consecutive terms as Administrative Judge. If a vacancy occurs in the office of Administrative Judge, the judges of the Civil Trial Division must hold an election to fill the vacancy at their next monthly meeting.

12.2 DESIGNEE. The Administrative Judge of the Civil Trial Division may by written order designate any other judge of the Division to act for the judge when the Administrative Judge is absent or unable to act. The judge so designated shall have all the duties and authority granted by these Rules to the Administrative Judge of the Civil Trial Division during the period of the designation.

Rule 15. UNIFORMITY.

15.1 TRIAL AND DISMISSAL DOCKETS. The judges of the Civil Trial Division shall only use those docket management form letters and form orders which have been approved by the judges of the Civil Trial Division.

15.2 APPOINTEE FEE REPORT. Each person appointed by a judge in the Civil Trial Division to a position for which any type of fee may be paid shall file the designated uniform report before any judgment, dismissal, or nonsuit is signed. This report is required for every appointment made whether or not a fee is charged.

15.3 RECORDING AND BROADCASTING OF COURT PROCEEDINGS. Recording or broadcasting court proceedings in the Civil Trial Division is governed by uniform rules adopted by the judges of the Civil Trial Division.

Rule 16. MEETINGS.

The judges of the Civil Trial Division shall meet regularly on the first Tuesday of each month from 12:15 until 1:15 p.m. The Administrative Judge of the Civil Trial Division may call a special meeting by written notice distributed at least 72 hours in advance of the meeting. Any special meeting called will state an ending time for the meeting. The judges may vote to reschedule or cancel any monthly meeting. No more than two meetings in any calendar year may be canceled.

Rule 17. EFFECTIVE DATE.

Effective October 20, 1987; amended 1/22/90; 7/1/90; 8/31/91; 1/3/96; 7/2/97; 4/27/98; 5/26/99; 5/4/04, 4/28/14

LOCAL ADMINISTRATIVE RULES

of the

DISTRICT COURTS

and

COUNTY COURTS-AT-LAW

of

LUBBOCK COUNTY, TEXAS

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RULE 1 - GENERAL

Rule 1.10 Court Sessions, Annual Calendars, Holidays

(A) The district courts and the county courts-at-law shall each publish annually a joint calendar setting out a schedule for jury and non-jury weeks for each respective court. Copies of such calendar will be kept in the district clerk's office and the county clerk's office and will be furnished upon request.

(B) The courts will observe those holidays set by consensus of the county public officials and published by the Commissioners Court of Lubbock County.

Rule 1.11 Hours of Court Proceedings

Court shall be held at such times as may be determined expedient by the judge of each court.

RULE 2 - LOCAL ADMINISTRATIVE JUDGE

Rule 2.10 Powers and Duties of Local Administrative Judge

(A) The local administrative judge shall have duties prescribed in Section 74.092, Texas Government Code.

(B) The judges of the District Courts, County Courts-at-Law and County Court of Lubbock County shall elect a district judge for a term of two (2) years.

(C) The local administrative judge shall call for a meeting of the judges at least once monthly.

Rule 2.20 Court Divisions

(A) The District Courts of Lubbock County are General Jurisdiction Courts, but each court will primarily hear either civil or criminal cases according to the following table:

72nd District Court:	Civil
99th District Court:	Civil
237th District Court:	Civil
137th District Court:	Criminal
140th District Court:	Criminal
364th District Court:	Criminal

(B) Each of the District Courts shall continue to hear family and tax cases.

(C) The County Courts at Law of Lubbock County are General Jurisdiction Courts,

but each court will primarily hear either civil or criminal cases according to the following table:

County Court at Law No. One:	Criminal
County Court at Law No. Two:	Criminal
County Court at Law No. Three:	Civil

(D) The judges by their annual calendar shall provide for the district judge to be assigned to the central jury pool for each week. Other matters such as extradition hearings and emergency matters shall be heard by the judge presiding in the central jury pool for that week.

RULE 3 - CIVIL CASES

Rule 3.10 Policy Statement

It is the purpose of the Board of Judges of Lubbock County, Texas to provide a system of effective case flow for all civil cases filed in these courts. Taking into account the rights of litigants, their attorneys, the costs associated with cases filed, the responsibility of ensuring all parties a fair and timely resolution of their disputes, and numerous other factors and case management studies, the Board of Judges of Lubbock County will implement rules and procedures to accomplish this purpose.

It is to be noted that the Board of Judges has asked for and received suggestions from the Lubbock County Bar and has adopted many of the suggestions provided by committees named by the Bar for this specific purpose. It is the responsibility of the courts to establish procedures for the timely and effective disposition of civil cases. In fulfilling its responsibility, the Board of Judges wishes to build continuing respect by the community for the established judicial system of government available to all people.

These rules are not intended to conflict with any applicable promulgated statute or rule, and in the event of such conflict, the promulgated rule or statute shall prevail.

Rule 3.20 Policy Goals

The goals of the Lubbock County Board of Judges with respect to the courts hearing civil matters are:

(A) To provide an effective and fair procedure for the timely disposition of civil cases.

(B) To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions.

(C) To establish reasonable rules and policies to require the disposition of cases

without unnecessary delays or interruptions.

(D) To establish early judicial intervention with attorney input in order to have an orderly and speedy proceeding.

(E) To provide parties and their respective attorneys a clear understanding of the specific chronological order and requirements of scheduled events in their respective case.

Rule 3.30 Case Level and Deadlines for Disposition

In order to effectuate the above goals, it is the intent of the Lubbock County Board of Judges to differentiate between cases according to their anticipated complexity and length. In the discretion of the courts and in accordance with established rules of procedure, cases will be generally assigned according to levels as follows:

(A) Level 0ne

These cases will be concluded at the trial level no later than 12 months from the date of filing. 90% of these cases will be concluded within 8 months. 98% will be concluded within 10 months. 100% will be concluded within 12 months.

(B) Level Two

These cases will be concluded at the trial level no later than 18 months from the date of filing. 90% will be concluded within 14 months. 98% will be concluded within 16 months. 100% will be concluded within 18 months.

(C) Level Three

These cases will be concluded within 24 months. 90% will be concluded within 20 months. 98% will be concluded within 22 months. 100% will be concluded within 24 months.

The Board of Judges realizes that there may be extenuating circumstances and each court retains the right to schedule cases as it sees appropriate in accomplishing the goals as set out herein above.

Rule 3.40 Case Level Definitions and Time Frames

(A) Level One:

Suits in which plaintiffs seek only monetary relief of $50,000.00 or less. (See Tex. R. Civ. P. 190.1. Changes to this rule will be made in accordance with the rules of procedure, i.e. monetary amount, if necessary.) These cases shall be tried no later than 12 months from time of filing. The trial date shall be set at the discretion of the court, taking into consideration the complexity of the case.

(1) Scheduling Orders:

Within 20 days from the date of first answer filed in a case, counsel are to confer as to the content of a scheduling order. If counsel agree on content and deadline dates, the plaintiff named first in the lawsuit shall submit a scheduling order to the court within 30 days from first answer date. If counsel do not agree, a hearing must be requested and the request received by the court within 23 days from first answer date. A hearing will be held and an order entered within 30 days from first answer date. If no hearing is requested within the designated time or if an agreed order is not submitted, the court will enter its own order at 5:00 o'clock p.m. 30 days from the date of first answer. (See the attached Court's Default Scheduling Order)

(2) Joinder of Parties, etc.:

Joinder of Parties, Plaintiff's Designation of Expert Witnesses, Defense Designation of Expert Witnesses, Discovery Deadlines, and any other matter, except those matters outlined in Rule 3.40(A)(3), (4), (5) and (6) will be done by agreement of counsel, or by the court if no agreement is reached, as outlined in Rule 3.40(A)(1). Any agreement by the attorneys shall not conflict with the assigned trial date or other events set by the court.

(3) Filing of Dispositive Motions:

All dispositive motions shall be filed and necessary hearings requested no later than 105 days before trial date. If the court fails to rule within 30 days, and upon the request of one of the parties, a hearing will be held for the specific purpose of assessing the remainder of the scheduling order and trial date.

(4) Challenges to Experts:

All challenges to expert witnesses or objections to expert witnesses shall be filed as follows:

Challenge to the Plaintiff's expert witnesses shall be filed at least 120 days before the trial date. If the court strikes the expert the Plaintiff shall have 30 days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses. If a new expert is designated, the opposing parties will have 30 days to designate any rebuttal experts.

Challenge to Defense expert witnesses shall be filed at least 90 days before trial date. If the court strikes the expert, the Defense will have 30

days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses.

(5) Alternative Dispute Resolution:

ADR shall take place no later than 30 days before trial. ADR may take place at any earlier time to which the parties may agree or at a time designated by the court, whichever is sooner. Cases will automatically be sent to the Dispute Resolution Center or a Neutral Mediator, selected by the parties, to be set at least 30 days before trial, unless the attorneys agree to an earlier date and that date is available with the Center. The court may designate a date prior to the 30 days if it deems it necessary to accomplish the purpose and goals of the Lubbock County Board of Judges.

(6) 30 Days Prior To Trial:

During this 30 day period, the court at its discretion may set a Trial Management Conference, a Scheduling Conference (the court may set other scheduling conferences throughout the proceeding of the case and prior to this 30 day period), a Settlement Conference, or any other hearing or matter the court deems appropriate to accomplish the purpose and goals of the Lubbock County Board of Judges.

(B) Level Two:

All cases as outlined in Tex. R. Civ. P. 190.3. These cases shall be concluded within 18 months from the date of filing. The trial date shall be set at the discretion of the court, taking into consideration the complexity of the case.

(1) Scheduling Orders:

Within 30 days from the date of first answer filed in a case, counsel are to confer as to the content of a scheduling order. If counsel agree on content and deadline dates, the plaintiff named first in the lawsuit shall submit a scheduling order to the court within 40 days from first answer date. If counsel do not agree, a hearing must be requested and the request received by the court within 33 days from first answer date. A hearing will be held and an order entered within 40 days from first answer date. If no hearing is requested within the designated time or if an agreed order is not submitted, the court will enter its own order at 5:00 o'clock p.m. 40 days from the date of first answer. (See the attached Court's Default Scheduling Order)

(2) Joinder of Parties, etc.:

Joinder of Parties, Plaintiff's Designation of Expert Witnesses, Defense Designation of Expert Witnesses, Discovery Deadlines, and any other matter, except those matters outlined in Rule 3.40(B)(3), (4), (5) and (6). will be done by agreement of counsel or by the court if no agreement is reached as outlined in Rule 3.40(B)(1). Any agreement by the attorneys shall not conflict with the assigned trial date or other events set by the court.

(3) Filing of Dispositive Motions:

All dispositive motions shall be filed and necessary hearings requested no later than 105 days before trial date. If the court fails to rule within 30 days, and upon the request of one of the parties, a hearing will be held for the specific purpose of assessing the remainder of the scheduling order and trial date.

(4) Challenges to Experts:

All challenges to expert witnesses or objections to expert witnesses shall be filed as follows:

Challenge to the Plaintiff's expert witnesses shall be filed at least 120 days before the trial date. If the court strikes the expert the Plaintiff shall have 30 days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses. If a new expert is designated, the opposing parties will have 30 days to designate any rebuttal experts.

Challenge to Defense expert witnesses shall be filed at least 90 days before trial date. If the court strikes the expert, the Defense will have 30 days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses.

(5) Alternative Dispute Resolution:

ADR shall take place no later than 30 days before trial. ADR may take place at any earlier time to which the parties may agree or at a time designated by the court, whichever is sooner. Cases will automatically be sent to the Dispute Resolution Center or Neutral Mediator, selected by the parties, to be set at least 30 days before trial, unless the attorneys agree to an earlier date and that date is available with the Center. The court may designate a date prior to the 30 days if it deems it necessary to accomplish the purpose and goals of the Lubbock County Board of Judges.

(6) 30 Days Prior To Trial:

During this 30 day period, the court at its discretion may set a Trial

management Conference, a Scheduling Conference (the court may set other scheduling conferences throughout the proceeding of the case and prior to this 30 day period), a Settlement Conference, or any other hearing or matter the court deems appropriate to accomplish the purpose and goals of the Lubbock County Board of Judges.

(C) Level Three:

All cases as outlined in Tex. R. Civ. P. 190.4. These cases shall be tried no later than 24 months from date of filing. The trial date shall be set at the discretion of the court, taking into consideration the complexity of the case.

(1) Scheduling Orders:

Within 45 days from the date of first answer filed in a case, counsel are to confer as to the content of a scheduling order. If counsel agree on content and deadline dates, the plaintiff named first in the lawsuit shall submit a scheduling order to the court within 60 days from first answer date. If counsel do not agree, a hearing must be requested and the request received by the court within 50 days from first answer date. A hearing will be held and an order entered within 60 days from first answer date. If no hearing is requested within the designated time or if an agreed order is not submitted, the court will enter its own order at 5:00 o'clock p.m. 60 days from the date of first answer. (See the attached Court's Default Scheduling Order)

(2) Joinder of Parties, etc:

Joinder of Parties, Plaintiff's Designation of Expert Witnesses, Defense Designation of Expert Witnesses, Discovery Deadlines, and any other matter, except those matters outlined in Rule 3.40(C)(3), (4), (5) and (6) will be done by agreement of counsel or by the court if no agreement is reached as outlined in Rule 3.40(C)(1). Any agreement by the attorneys shall not conflict with the assigned trial date or other events set by the court.

(3) Filing of Dispositive Motions:

All dispositive motions shall be filed and necessary hearings requested no later than 105 days before trial date. If the court fails to rule within 30 days, and upon the request of one of the parties, a hearing will be held for the specific purpose of assessing the remainder of the scheduling order and trial date.

(4) Challenges to Experts:

All challenges to expert witnesses or objections to expert witnesses shall

be filed as follows:

All challenges or objections to expert witnesses shall be made within 45 days following the latter of the following dates: 1) Designation; 2) Furnishing of written report and curriculum vitae; or 3) Deposition. Neither of these dates or events may conflict with Rule 3.40(C)(6) below. If the court strikes the Plaintiff's expert, the Plaintiff shall have 30 days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses. If a new expert is designated, the opposing parties will have 30 days to designate any rebuttal experts. If the court strikes the Defense's expert, the Defense will have 30 days to designate a new expert. During those 30 days, the court will not consider any motions for summary judgment as concerns expert witnesses.

(5) Alternative Dispute Resolution:

ADR shall take place no later than 30 days before trial. ADR may take place at any earlier time to which the parties may agree or at a time designated by the court, whichever is sooner. Cases will automatically be sent to the Dispute Resolution Center or a Neutral Mediator, selected by the parties, to be set at least 30 days before trial, unless the attorneys agree to an earlier date and that date is available with the Center. The court may designate a date prior to the 30 days if it deems it necessary to accomplish the purpose and goals of the Lubbock County Board of Judges.

(6) 30 Days Prior To Trial:

During this 30 day period, the court at its discretion may set a Trial Management Conference, a Scheduling Conference (the court may set other scheduling conferences throughout the proceeding of the case and prior to this 30 day period), a Settlement Conference, or any other hearing or matter the court deems appropriate to accomplish the purpose and goals of the Lubbock County Board of Judges.

Rule 3.50 Definitions

(A) Dispositive Motions: These motions include Motions to Transfer Venue, Motions to Dismiss, Pleas to the Jurisdiction, Pleas in Bar, Motions for Summary Judgment and Pleas in Abatement. (Summary Judgment Motions will be heard by submission of briefs only unless oral arguments have been requested and granted by the trial court.)

(B) ADR: Alternative Dispute Resolution

(C) DCM: Differentiated Case Management

(D) TMC: Trial Management Conference

Rule 3.55 Filings

(A) The District Clerk will file all new civil cases, other than family law and tax cases, on a random basis among the 72nd District Court, the 99th District Court and the 237th District Court, utilizing a computer software program designed for this purpose. Said software program will ensure that each of the three (3) said District Courts will be assigned an equal number of civil cases on a random basis. The District Clerk will continue to assign Tax cases to each of the six (6) District Courts on a random basis as is currently being done. The District Clerk will continue to assign Family law cases to each of the six (6) District Courts and three (3) County Courts at Law on a random basis as is currently being done.

(B) The County Clerk will file all new civil cases in County Court at Law # 3.

(C) A "Case Information Sheet" must be filed along with a new petition, and a "Response Information Sheet" must be filed along with an original answer. The District Clerk and County Clerk will accept filings on new cases without a completed "Case Information Sheet" being attached, however, the clerks will inform the filing party that the "Case Information Sheet" must be filed within ten (10) days of the date of filing the petition or the case will be placed on a "Dismiss for Want of Prosecution" docket by the court. The District Clerk and County Clerk will accept answers for filing without a completed "Response Information Sheet", but will inform the filing party that a completed "Response Information Sheet" must be filed within ten (10) days of the filing of the answer.

RULE 4 - FAMILY LAW CASES

Rule 4.10 Parental Notification

An application for an order under Section 33.003, Family Code , may be filed in a district court, a county court-at-law, or a court having probate jurisdiction. The application must be filed with the district clerk of Lubbock County, who will assign the application to a court as provided by these local rules. If the county clerk receives an application under this rule, the application must be accepted, but the county clerk must then transfer it instanter to the district clerk, and must advise the person tendering the application where it is being transferred.

The district clerk will assign the application to the appropriate court utilizing a rotating

system. Each of the eligible courts will be assigned applications under this section for a period of one calendar month pursuant to the following schedule:

Month 1: 72nd District Court

Month 2: 99th District Court
Month 3: 137th District Court
Month 4: 140th District Court
Month 5: 237th District Court
Month 6: 364th District Court
Month 7: County Court at Law No. 1
Month 8: County Court at Law No. 2
Month 9: County Court at Law No. 3
Month 10: County Court
Month 11: 72nd District Court
Month 12 and beyond: repeat rotation

If the judge of the assigned court is unavailable, then the district clerk shall assign the application to a judge selected by the local administrative judge.

Rule 4.20 Policy Statement

It is the goal of these rules that case disposition in family law matters shall be accomplished as effectively and efficiently as possible, in a just and timely manner. To achieve this goal, cases will be assigned a level according to the anticipated complexity of the case. The Judges recognize that family law cases have peculiarities which require special consideration such as reconciliation efforts and counseling. Each court retains the right to schedule a case as it deems appropriate and must do so when the interest of justice requires, taking into consideration the complexity and circumstances of the case pursuant to Rule 190.5 of the Texas Rules of Civil Procedure, as amended.

These rules are not intended to conflict with any applicable statute or the Texas Rules of Civil Procedure. In the event of such conflict, the applicable statute or Texas Rules of Civil Procedure shall prevail.

Rule 4.25 Case Level and Time Standards for Case Disposition

(A) Level One:

Any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000 should be concluded at the trial level within three months from the answer due date.

(B) Level Two:

Any suit brought under Title 1, 2, or 5 of the Texas Family Code and/or substantial property issues should be concluded at the trial level no later than nine months from the answer due date.

(C) Level Three:

Any suit brought under Title 1, 2, or 5 of the Texas Family Code and/or

substantial property issues, and/or complex legal or factual issues should be concluded at the trial level no later than 12 months from the answer due date.

Rule 4.30 Scheduling Conference and Order

(A) Scheduling Conference

A scheduling conference will be set approximately 30 to 60 days after the answer due date. Prior to the scheduling conference, the parties may seek temporary orders, proceed with discovery, set the case for hearings or final trial in accord with the Texas Rules of Civil Procedure and these rules.

(B) Scheduling Order

At the time of the scheduling conference, or by agreement prior to the date of the scheduling conference, a scheduling order will be entered scheduling the case for trial and setting forth deadlines and agreements of the parties necessary to prepare the case for trial.

If an attorney or a pro se party fails to appear at a scheduling conference without good cause, the scheduling order may be entered in his or her absence.

Rule 4.35 Ancillary Proceedings, Temporary Orders and Emergency Matters

(A) An associate judge has been duly appointed for the district courts and county courts-at-law of Lubbock County and the following will be heard originally by the associate judge:

(1) motions to modify child support;

(2) motions to modify visitation orders;

(3) motions for temporary restraining orders and motions for temporary orders in suits for divorce or annulment;

(4) motions for temporary restraining orders and motions for temporary orders in suits affecting the parent-child relationship;

(5) a habeas corpus proceeding;

(6) motions to enforce child support;

(7) hearings requested pursuant to Title 4 of the Texas Family Code;

(8) hearings required by Chapter 262 and 263 of the Texas Family Code;

(9) motions to transfer;

(10) motions to withdraw;

(11) motions to dismiss;

(12) any other matter referred to the associate judge by the presiding judge.

(B) All motions on ancillary proceedings, temporary orders and emergency matters shall be presented to the court coordinator of the associate judge for scheduling for hearing before the associate judge. A request for hearing document shall accompany the order setting hearing. Orders setting hearings are to be signed by the associate judge or trial judge. Proper notice or service shall be the responsibility of the moving attorney or pro se party. A scheduling order shall not be required for hearings set out above unless ordered by the Judge.

Rule 4.40 Referral to Master

(A) A master has been duly appointed for the district courts and county courts-at-law of Lubbock County and the following will be heard originally by the master:

(1) All cases filed pursuant to Title IV-D of 42 U.S.C. Sections 651, et seq., by direction of § 201.101 et seq. of the Family Code;

(2) All support, contempt, and visitation matters in which the Texas Department of Human Resources is represented by the Texas Attorney General's Office;

(3) Any other matter referred to a master by the presiding judge.

(B) Time for Disposition of Title IV-D Cases

Title IV-D cases must be completed in accordance with § 201.110 of the Texas Family Code.

Rule 4.45 Alternative Dispute Resolution

(A) Policy

In family law matters, it shall be the policy of the Board of Judges of Lubbock County, Texas to encourage the peaceable resolution of disputes and early settlement of pending litigation, including family law litigation, by referral to alternative dispute resolution (ADR) pursuant to the Texas Alternative Dispute Resolution Procedures Act, Texas Civil Practice and Remedies Code, Chapter 154.

(B) ADR Mandatory

No jury or nonjury trial shall be conducted in any case (except juvenile delinquency cases) until all contested issues have been referred to an ADR procedure and ADR has been unsuccessful, or the Court has determined that ADR is inappropriate for the case. ADR shall be completed no later than 30 days before trial.

(C) Manner of Referral

It is anticipated that the parties shall cooperate in an ADR procedure, under the terms and conditions ordered by the Court. After a date of completion for ADR is provided in the scheduling order, the Dispute Resolution Center (DRC) shall contact the parties by letter regarding the scheduling of mediation. Should the parties agree to use a selected neutral for this case, they shall notify the DRC and court within seven (7) days naming a neutral of their choice. The case will proceed according to the scheduling order. The selected neutral shall report the outcome of the ADR procedure to the DRC and court consistent with the provisions of the Tex. Civ. Prac. & rem. Code Ann. Section 154.

(D) Objection to Referral

If the court enters an order of referral to an ADR procedure, any party may object to such referral pursuant to Texas Civil Practice and Remedies Code, Chapter 154. Upon the filing of an objection, the court shall schedule a hearing. If the Court finds that there is a reasonable basis for the objection, the court shall order that the case not be referred to an ADR procedure and order the case set for trial on the merits.

Rule 4.55 Documents Required

(A) A “Case Information Sheet” must be filed along with a new petition, and a “Response Information Sheet” must be filed along with an original answer. The District Clerk and County Clerk will accept filings on new cases without a completed “Case Information Sheet” being attached, however, the clerks will inform the filing party that the “Case Information Sheet” must be filed within ten (10) days of the date of filing the petition or the case will be placed on a “Dismiss for Want of Prosecution” docket by the court. The District Clerk and County Clerk will accept answers for filing without a completed “Response Information Sheet”, but will inform the filing party that a completed “Response Information Sheet” must be filed within ten (10) days of the filing of the answer.

(B) In all cases in which support of a spouse and/or child(ren) is in issue, whether temporary or final, each party shall be required to furnish to the court and opposing party:

(1) A statement of monthly income and expenses.

(2) Copies of that party's federal income tax returns for the two calendar years prior to the hearing.

(3) All payroll statements, pay stubs, W2 forms, and 1099 forms which evidence that party's earnings for the calendar year prior to the hearing and from January 1 of the current year through the date of the hearing.

(4) Copies of any financial statements filed by that party with any financial institution in the two years prior to the hearing.

(C) In all suits involving child support, each party who is a parent shall furnish to the court the information described for determination of child support set out in Section 154.063, Texas Family Code, as amended.

(D) Inventory and Appraisement

(1) Inventory and Appraisement Required

In all cases in which the character, value or division of property or debts is in issue, each party shall file, not less than thirty (30) days prior to final hearing, a sworn inventory and appraisement of all of the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties.

(2) Composite Inventory and Appraisement

After each party's sworn inventory and appraisement has been filed, the parties shall file a composite inventory and appraisement, which will include all items on each party's sworn inventory and appraisement. The petitioner shall initiate the composite inventory and forward it to the respondent for completion not less than seven (7) days prior to trial. The respondent shall complete and file the composite inventory with the court and serve a copy of the same on the petitioner not less than three (3) days prior to trial. On the composite inventory, each party will indicate in the space provided any asset or liability he or she requests as an award from the court. All values assigned by the parties will be assumed by the court

to fairly represent the value each party assigns to the asset or liability described.

(3) Sanctions for Failure to File

If a party or the parties fail to prepare and/or file the initial inventory as required, the court may conduct a pretrial hearing and make such orders with regard to the failure as are just, including but not limited to, sanctions

pursuant to Rule 215(2)(b) of the Texas Rules of Civil Procedure, as amended.

Rule 4.60 Duration of Orders

No temporary order shall exceed one year in duration from the date the order is signed, except by agreement of the parties or order of the court.

Rule 4.65 Parent Education and Family Stabilization Course

(A) Seminar Mandatory

(1) All parties in original suits affecting the parent-child relationship or in suits to modify existing orders of conservatorship or possession shall attend and complete an educational seminar. The content of the seminar or course shall include, but not be limited to:

(a) the emotional effects of divorce on parents;
(b) the emotional and behavioral reactions to divorce by young children and adolescents;
(c) parenting issues relating to the concerns and needs of children at different developmental stages;
(d) stress indicators in young children and adolescents;
(e) conflict management;
(f) family stabilization through development of a co-parenting relationship;
(g) the financial responsibilities of parenting;
(h) family violence, spousal abuse, and child abuse and neglect; and
(i) the availability of community services and resources.

(2) A course taken in compliance with Section 105.009 of the Texas Family Code, as amended, satisfies the requirements of this rule. A list of approved programs and dates and times for such programs can be obtained from the Associate Judge's office at 904 Broadway, Room 306. Parties who wish to satisfy the requirement with another program may submit information regarding the program to the Associate Judge for approval prior to enrollment in the program. The requirement of a parenting program may be waived by the referring court for good cause shown.

(3) Fees

Each party shall attend the seminar or approved service of equal value at that party's sole cost and expense. The fee shall be payable to the service provider prior to the program date. The fee for the seminar shall be reduced or waived in cases of indigency as determined by the court.

(4) Deadline for Completion

The seminar shall be initiated within thirty days from the answer due date, and evidence of completion filed with the court at least seven days prior to the final hearing.

(5) Verification of Attendance

Each party completing the seminar shall be provided with a certificate of attendance which that party shall present to the court prior to final hearing of the case.

(6) Sanctions

The court may take appropriate action with regard to a party who fails to attend or complete a course or seminar ordered by the court, including holding the party in contempt of court, striking pleadings, or invoking any sanction provided by Rule 215, Texas Rules of Civil Procedure, as amended.

Rule 4.70 Dismissal for Want of Prosecution

(A) Dismissal Docket

The court may set a "Try or Dismiss" Docket. All cases which have been on file for more than one (1) year may be dismissed for want of prosecution unless retained on the docket by order of the court.

(B) Other Dismissals for Want of Prosecution

The court, on its own motion, may dismiss a case for want of prosecution. The procedure provided in Rule 165a of the Texas Rules of Civil Procedure, as amended shall apply.

RULE 5 - CRIMINAL CASES

Rule 5.10 Policy Statement

It is the responsibility of the courts to establish procedures for the timely and effective disposition of criminal cases. The courts are charged with the responsibility of ensuring both the State of Texas and all defendants a fair and timely resolution of criminal accusations, and the courts are in the best position to establish neutral rules and policies without adversely affecting either side's right to a fair trial. Effective management of the judicial system will build continuing respect by the community for government, minimize the costs and maximize the probability that cases will be timely resolved. It is the purpose of these rules to establish such procedures.

These rules are not intended to conflict with any applicable statute or rule, and in the

event of any such conflict, the statute or rule shall prevail.

Rule 5.15 Policy Goals

(A) The goals of the Lubbock County Board of Judges with respect to the courts hearing criminal matters are:

(1) To provide an effective and fair procedure for the timely disposition of criminal cases;

(2) To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and

(3) To establish reasonable rules and policies to require that cases be disposed of without unnecessary delays or interruptions.

(B) In order to effectuate these goals, it is the intent of the Board of Judges to differentiate between cases according to their anticipated complexity and length. In the discretion of the courts, cases will be generally assigned, under these policies and rules, into one of the following levels:

(1) Level One: Level One cases are defined as felony cases with an estimated length of trial of two days or less and/or presenting no complex legal issues. It is expected that these cases will reach disposition in no more than nine (9) months from the date of arraignment.

(2) Level Two: Level Two cases are defined as felony cases with an estimated length of trial of more than two but less than six days, and/or presenting significant legal or factual issues. It is expected that these cases will reach disposition in no more than twelve (12) months from the date of arraignment.

(3) Level Three: Level Three cases are defined as felony cases with an estimated length of trial of more than five (5) days and/or presenting complex legal and/or factual issues. It is expected that these cases will

reach disposition in no more than eighteen (18) months from the date of arraignment.

(4) Misdemeanors: Misdemeanor cases are expected to reach disposition in no more than six (6) months from the date of arraignment.

(C) The courts recognize that an early and amicable disposition will minimize costs to the taxpayers and defendants. The courts will encourage early disposition of cases without the necessity of a trial whenever possible.

Rule 5.20 Criminal Case Management: From Case Filing to Disposition

(A) An Initial Appearance will be conducted pursuant to Article 15.17, Code of Criminal Procedure, for all defendants in jail within 24 - 48 hours of their arrest.

(B) A defendant in jail longer than 72 hours will be appointed an attorney within the next 24 hours, i.e., all defendants in jail should have an attorney appointed within 96 hours of their arrest.

(C) The courts will encourage the Criminal District Attorney to make a filing decision or present a case to a Grand Jury within 30 days of a defendant's arrest.

(D) Felony Arraignments will be held within 10 days of indictment.

(E) Misdemeanor Arraignments will be held within 30 days of complaint.

(F) An attorney hired by a defendant will immediately file a Notice of Appearance with the appropriate clerk's office and notify the Criminal District Attorney's Office and the appropriate court coordinator by forwarding to them a copy of said Notice.

(G) The First Scheduling Conference in felony cases will be held within 30 - 45 days of the arraignment. In misdemeanor cases, the First Scheduling Conference will be set as soon as possible after the 30th day after the arraignment. The Criminal District Attorney shall make a plea bargain offer, or announce that no offer will be made, at least 10 days prior to the first scheduling conference. At the first scheduling conference, it is not necessary for the defendant to be present, as long as the defense attorney is in contact with his client, and the attorney is in a position to either accept or reject the offer made by the state. If subsequent scheduling conferences are necessary, the defendant must be present at each one. The purpose of the scheduling conference is to determine whether the defendant accepts or rejects the plea bargain offer; if rejected, whether the defendant will plead guilty to the court or to a jury; if the plea is not guilty, whether a jury trial will be required, and if so, how long the trial is estimated to last. If a trial is required, a trial date will be assigned by the court, along with a pre-trial hearing date, which will be at least ten (10) days prior to the trial date.

(H) Each court will determine the trial settings according to their schedule, but all cases will receive a specific date and time, in writing, for any setting from the court, at each scheduling conference.

Rule 5.25 Management of the Trial

(A) Pre-Trial Matters

All pre-trial matters should be concluded at the pre-trial conference prior to the trial date. If any new matters arise after the pre-trial conference, they should be brought to the trial court's attention as soon as they are discovered.

(B) Witnesses

The attorneys shall arrange for all witnesses to be immediately available as needed in order that there shall be no interruptions or delays. Any scheduling problems shall be brought to the attention of the court immediately. The attorneys shall instruct all witnesses not to discuss any aspect of the case in or around the courtroom or in the vicinity of any prospective juror and not to communicate in any fashion with any prospective juror or sworn juror.

The attorneys shall remain seated at counsel table at all times while questioning witnesses unless permission has been granted by the trial judge to approach the witness for showing them an exhibit, etc., or as otherwise directed by the trial judge. Counsel are expected to stand while addressing the court.

(C) Paperwork Following Trial

Immediately following a trial, the district attorney's office will prepare any required paperwork, i.e., judgment of guilt, judgment of not guilty, etc., and present all such paperwork to the court for signature.

Rule 5.30 Filings/Return of Indictments

(A) The District Clerk will file all new criminal cases, other than capital murder cases, on a random basis among the 137th District Court, the 140th District Court, and the 364th District Court, utilizing a computer software program designed for this purpose. Said software program will ensure that each of the said three (3) District Courts will be assigned an equal number of criminal cases on a random basis. Capital Murder indictments will be assigned to the three (3) District Courts above on a rotating basis.

(B) The County Clerk will file all new criminal cases on a rotating basis between County Court at Law No. 1 and County Court at Law No. 2.

Rule 5.35 Withdrawal or Substitution of Counsel

(A) Subject to Rule 5.35(B), no attorney will be allowed to withdraw from a case without a hearing to (1) determine the reason, and (2) advise the defendant of his rights if the motion is granted.

(B) Substitution of counsel may be granted without a hearing if a motion is filed with the joint signatures of the attorney of record, the substituted attorney and the defendant.

Rule 5.40 Bond and Bond Forfeiture

(A) In all cases, the bond set by a magistrate shall remain in effect after indictment or

complaint unless the judge in whose court the case is pending resets the bond.

(B) Bond forfeiture will be promptly initiated upon a defendant's failure to appear for any hearing for which he/she is required to appear.

RULE 6 - JURY MANAGEMENT

Rule 6.10 Management of Juries

(A) Lubbock County has adopted an Electronic Jury Selection Plan as authorized by law.

(B) The Joint Annual Calendar of the District Courts will show the district judge presiding in the central jury pool. Judges may substitute for each other as the need may arise.

RULE 7 - JUDICIAL VACATION

Rule 7.10 Judicial Vacation

The judge of each court shall receive thirty (30) days vacation each year.

Rule 7.15 Notification of Local Administrative Judge

Notice of vacation or periods of absence longer than four days shall be provided to the local administrative judge at least four (4) weeks prior to the date of such vacation period or periods when possible. This rule shall not apply to judicial conferences and educational events.

Rule 7.20 Requests for Visiting Judge

In order to efficiently allocate resources, i.e., judges, courtrooms, court reporters, etc., all requests for a visiting judge shall go through the Local Administrative Judge.

RULE 8 - NON-JUDICIAL PERSONNEL

Rule 8.10 Non-Judicial Personnel

The Local Administrative Judge of Lubbock County shall supervise the court administration program and shall be responsible for all administrative matters peculiar to the courts (as distinguished from judicial matters), subject to Section 72.002(2) of the Texas Government Code and the Rules of Judicial Conduct. The

Local Administrative Judge shall periodically review the case flow procedures and operations of the court administration program and shall recommend necessary changes to the board of judges.

Rule 8.15 Qualifications of Non-Judicial Personnel

The board of judges shall determine the qualification of personnel in the administrative office.

RULE 9 - ATTORNEYS IN COURT

Rule 9.10 Conduct and Decorum of Counsel

(A) All lawyers shall dress in keeping with proper courtroom decorum, and all male lawyers shall wear coats and ties while in the attendance of the Court.

(B) While the court is in session all remarks of counsel shall be addressed to the Court and not to opposing counsel or the judge as an individual.

(C) In addressing the judges, lawyers shall at all times rise and remain standing to address the judge from their position at the counsel table, unless permission has been granted to approach the bench.

(D) Counsel shall remain seated at the counsel table while interrogating witnesses, except as may be necessary in handling or displaying exhibits or demonstrating evidence, or as otherwise directed by the court.

(E) Lawyers shall advise their clients and witnesses of proper courtroom decorum and seek their full cooperation therewith.

Rule 9.15 Requests for Continuance

(A) Contents of Motion

Unless counsel for all parties consent in writing to the request for a continuance and the same is approved by the Court, a motion must be filed pursuant to Rule 251, et seq. of the Texas Rules of Civil Procedure, as amended. The motion must be accompanied by an order setting the motion for a hearing. Any motion that does not meet these requirements will be denied without prejudice to the right to refile.

Rule 9.20 Conflict in Trial Settings

(A) Duty of Counsel to Notify Court

(1) Whenever an attorney has two or more cases on trial dockets for trial at the same time, it shall be the duty of the attorney to bring the matter to the attention of the courts concerned immediately upon learning of the conflicting settings.

(2) Priority of Cases in Event of Conflict

Insofar as practicable, the affected courts shall attempt to agree upon which case shall have priority.

Rule 9.25 Attorney Withdrawal

(A) Withdrawal of counsel shall be governed by Rule 10 of the Texas Rules of Civil Procedure, as amended, and the following rules.

(1) Notice to Client

If another attorney is not to be substituted as attorney for the party, or if the party does not consent to the motion to withdraw, the withdrawing attorney shall notify the client in writing and set the motion to withdraw for a hearing with notice of the date and time of the hearing provided to the client and counsel for any parties.

(2) Orders

All orders granting withdrawal of counsel shall require withdrawing counsel to notify his or her client of all pending settings and deadlines known to withdrawing counsel.

(3) No Delay of Trial

Unless allowed in the discretion of the Court, no motion to withdraw shall be granted when it is presented within thirty (30) days of the trial date or at such a time as to require a delay of trial.

RULE 10 - MISCELLANEOUS LOCAL RULES

Rule 10.10 Settlement Week

Settlement Weeks shall be scheduled for the weeks of the West Texas Judicial Conference and the Annual Judicial Conference as designated on the courts' calendar, so far as is practical; otherwise they will be scheduled by the local administrative judge.

Rule 10.15 Miscellaneous Local Rules

Any local rule or order heretofore jointly entered by the courts shall remain in full force and effect unless in conflict with these adopted rules.

Rule 10.20 Judicial Budget Matters

(A) The district courts shall submit budgets to the commissioners court in a timely fashion for all departments within their jurisdiction.

(B) The county courts-at-law shall submit budgets to the commissioners court in a timely fashion for all departments within their jurisdiction.

Rule 10.25 Relationship With Other Governmental Bodies, The Public and The News Media

The board of judges shall at least once each year review their relationship with other governmental bodies, the public and the news media.

Rule 10.30 Forms

Forms required by these rules are available from the District Clerk's Office, the County Clerk's Office, the Administrative Office of the District Courts, the Administrative Office of the County Courts at Law and the Associate Judges' Court.

RULE 11

Rule 11.10 Procedure for Adoption and Amendment of Local Rules

Amendment of these local rules may be determined by the Board of Judges by majority vote at any Board of Judges' meeting upon three (3) days prior notice of presentation of amendments.

APPROVED:

J. Blair Cherry, Jr., Judge Presiding
72nd District Court

Mackey K. Hancock, Judge Presiding
99th District Court

Cecil G. Puryear, Judge Presiding
137th District Court

Jim Bob Darnell, Judge Presiding
140th District Court

Sam Medina, Judge Presiding
237th District Court

Bradley S. Underwood, Judge Presiding
364th District Court

Rusty Ladd, Judge Presiding
County Court at Law # 1

Drue Farmer, Judge Presiding
County Court at Law # 2

Paula Lanehart, Judge Presiding
County Court at Law # 3

Pecos County

112th Judicial District

Courthouse:	Judicial Center 400 S. Nelson Fort Stockton, TX 79735		
Judge	Brock Jones 907 Ave. D P.O. Drawer C Ozona, TX 76943	 Fax	325-392-5225 325-392-3434
District Clerk	Lisa Villarreal 400 S. Nelson Fort Stockton, TX 79735	 Fax	432-336-8201 432-336-6437
Court Administrator	Cathy Carson 907 Ave. D P.O. Drawer C Ozona, TX 76943	 Fax	325-392-5225 325-392-3434

RULE 1. CIVIL CASES

RULE 1.10 SETTINGS – JURY CASES

When setting a civil case for pre-trial, jury, non-jury or post trial hearing, please call the Court Administrator in Ozona, Texas prior to sending your Motion and Order Setting to obtain available hearing dates. After you have available dates, please contact opposing counsel to obtain a date that is agreeable to both parties. Once you have an agreed date, fill that date in on your Order Setting and forward both your Motion and Order, along with a statement that the date is an agreed date, to the Court Administrator in Ozona, Texas for entry with the Court.

RULE 1.11 REQUEST FOR SETTING – JURY CASES

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Administrator in Ozona, Texas. The party requesting a setting should not file the Request for Setting with the Clerk of Pecos County.

The Request for Setting shall contain the following:

1.) The style and number of the case, and the county where the case is pending.

2.) The name, address and telephone number of the attorney making the request and the party represented by said attorney;

3.) Whether discovery is intended to be conducted under level 1, 2 or 3 according to Rule 190, T.R.C.P.;

4.) The date on which the jury fee was paid;

5.) A statement that the pleadings of the party requesting the setting are in order;

6.) A statement that mediation has been completed or none is required.

(a) Pending mediation, all discovery is abated unless otherwise ordered by the Court.

7.) A statement that all discovery has been completed or none is desired.

(a) If discovery is pending the request shall contain the date on which discovery is expected to be completed;

8.) A statement that all pre-trial matters have been disposed of or none is pending.

(a) If pre-trial matters are pending the request for setting shall state the nature of same, the party asserting same, the estimated time for hearing same and possible dates for a pre-trial hearing which have been cleared with opposing counsel;

9.) A statement that the party requesting the setting has made a good-faith effort to negotiate a settlement of the case and further efforts appear futile.

10.) Possible dates for the trial of the case which have been cleared with opposing counsel.

(a) If opposing counsel will not agree to a date for trial, the dates proposed and the reason for opposing counsel's refusal to agree to same;

11.) The estimated time of trial;

12.) A certificate that a copy of the Request for Setting has been served on all counsel in the case, the name and address of each attorney and the date of service;

13.) The signature of the attorney making the Request.

14.) A blank Order Setting which should be attached to the Request.

RULE 1.12 ORDER SETTING – JURY CASES

a. In response to a Request for Setting, the Court will enter an Order setting the case for trial on the merits and deliver a copy of the same to the District Clerk to certify who will then deliver a certified copy to each attorney. If item 8.(a) in the Request for Setting is applicable, please send an Order Setting and the Court will set a pre-trial hearing.

b. ***At the bottom of all ORDER SETTINGS, please list all the parties who need to be notified. If the parties are represented by attorneys, please list the attorney's fax numbers. If they are pro se litigants, please give their addresses.***

RULE 1.13 PROPOSED JURY QUESTIONS – JURY CASES

At the time the parties announce ready, each party shall submit to the Court proposed jury questions.

RULE 1.20 SETTINGS – NON-JURY CONTESTED CASES

When setting a civil case for pre-trial, non-jury or post trial hearing, please call the Court Administrator in Ozona, Texas prior to sending your Motion and Order Setting to obtain available hearing dates. After you have available dates, please contact opposing counsel to obtain a date that is agreeable to both parties. Once you have an agreed date, fill that date in on your Order Setting and forward both your Motion and Order, along with a statement that the date is an agreed date, to the Court Administrator in Ozona, Texas for entry with the Court.

RULE 1.21 REQUEST FOR SETTING – NON-JURY CONTESTED CASES

A setting for trial on the merits will be made in response to a written Request for Setting submitted directly to the Court Administrator in Ozona, Texas. The party requesting a setting should not file the Request for Setting with the Clerk of Pecos County. The contents of the Request for Setting shall be the same as a Request for Setting for jury trial except for item 4.

RULE 1.22 ORDER SETTING – NON-JURY CONTESTED CASES

a. The same procedure will be followed as for Jury Trial.

b. A setting will be made only in response to a proper written Request for Setting.

c. ***At the bottom of all ORDER SETTINGS, please list all the parties who need to be notified. If the parties are represented by attorneys, please list the attorney's fax numbers. If they are pro se litigants, please give their addresses.***

RULE 1.23 FAILURE TO AGREE ON SETTING – NON-JURY CONTESTED CASES

If the parties fail to agree on a hearing date, the Court will set matters for trial based on the Court's schedule.

RULE 1.30 DISMISSAL DOCKET: INVOLUNTARY DISMISSAL

At least once each year, each divorce case which has been on file for more than one year, and each civil case, other than divorce cases, which have been on file more that two years, may be set for hearing for all parties to show cause why same should not be dismissed for want of prosecution without further notice. Nothing in this rule shall prevent any court from adopting local rules governing the dismissal docket with shorter or longer pendency periods for dismissal.

RULE 1.40 UNCONTESTED AND DEFAULT MATTERS

When requesting a setting for uncontested divorces, agreed divorces, defaults or adoptions, you do not need to send an Order Setting. These matters can be set by contacting the Court Administrator in Ozona, Texas.

RULE 1.50 TEMPORARY RESTRAINING ORDERS AND PROTECTIVE ORDERS

a. An application for a Temporary Restraining Order and/or Protective Order, to be granted without notice to the adverse party, will be considered only upon the applicant's verified complaint or affidavit accompanying the application, and no testimony will be heard. No Temporary Restraining Order or Protective Order will be granted without notice to the adverse party unless the applicant's verified complaint or affidavit accompanying the application contains "specific facts," as required by Rule 680, T.R.C.P., and "a plain and intelligible statement of the grounds for such relief," as required by Rule 682, T.R.C.P. No such Temporary Restraining Order shall be granted upon a complaint or affidavit containing mere conclusions, even if verified.

b. Ex Parte Orders in family law matters must meet the requirements of the Family Code.

RULE 1.60 PUBLIC INFORMATION

The names and addresses of all parties to civil action filed with the County and District Clerks shall remain public information and shall not be confidential by law other than 30.015 of the Texas Civil Practices and Remedies Code.

RULE 2. CRIMINAL CASES

RULE 2.10 CONTINUANCES

All continuances shall be in accordance with Arts. 29.01 through 29.13, C.C.P. and Art. 30.003, Tx. Civil Prac. & Rem. Code.

RULE 2.11 AGREED CONTINUANCES

If you have a continuance that is agreed to by all parties, please contact the Court Administrator in Ozona, Texas and advise her of this and she will consult with the Judge prior to removing the matter from the docket. **Continuances are not automatic upon agreement by the parties. Mere filing of a Motion for Continuance does not mean the continuance will be granted.**

RULE 2.12 RESETTINGS

a. To obtain a resetting date, please contact the Court Administrator in Ozona, Texas for available dates, then contact opposing counsel to obtain a date that is available and agreeable to all counsel.

b. Send an Order Resetting with a cover letter advising the Court Administrator in Ozona, Texas of the date the parties have agreed on.

RULE 2.13 SETTINGS/SCHEDULING:

Criminal cases will be set for trial at the request of the District Attorney. Should a defendant desire a trial for which the District Attorney has not requested a setting, the case will be set in response to the defendant's request. A pre-trial hearing, as provided by Art. 28.01, C.C.P., will be conducted in each case prior to trial.

RULE 2.14 PAYMENT OF COURT APPOINTED ATTORNEYS:

All court appointed attorneys shall submit an Attorney Fee Voucher, which can be obtained from the Court Administrator in Ozona, Texas.

RULE 3. FAMILY LAW CASES

RULE 3.10 CASES INVOLVING CHILDREN

The trial of family law cases involving children will be given preference over the trial of other civil cases.

RULE 3.11 INCOME AND EXPENSE STATEMENTS

The attorneys in all contested hearings concerning support shall prepare complete written income and expense statements as to their respective clients and present same to the Court prior to the hearing.

RULE 3.12 WRITTEN INVENTORY

In all contested cases involving the division of property the attorney shall prepare a complete written inventory of the assets and liabilities of the marital estate and of the separate estate of their respective client and submit same to the Court prior to trial.

RULE 3.13 CHAPTER 33 CASES

All cases filed involving Chapter 33 of the Texas Family Code, shall be filed with the District Clerk and docketed in the 112th District Court. The District Clerk will immediately notify the Court Administrator of the 112th District Court of a filing involving Chapter 33 of the Texas Family Code. All hearings required under Chapter 33 of the Texas Family Code, shall be conducted by the Judge of the 112th District Court, or a Judge sitting by Assignment in the 112th District Court.

RULE 3.14 FORM VS-165

All divorces and annulments are reported to the Bureau of Vital Statistics, using Form VS-165 provided by the bureau. Per Sec. 194.002 of the Health and Safety Code, the clerk shall file with the Bureau a completed report for each divorce or annulment granted during the preceding calendar month. The Attorney General and any attorney of record, in a case involving a divorce, an annulment, or any suit affecting the parent-child relationship shall complete the form and present it to the presiding judge upon the filing of the decree or judgment. No decree or judgment will be signed until said document is submitted.

RULE 4. GENERAL RULES

The following rules apply to all cases:

RULE 4.10 CERTIFICATE OF SERVICE

At the end of all MOTIONS, please include the opposing counsel's name, address, phone number and fax number under the Certificate of Service. Please do not put "...a copy has been sent to all opposing counsel." (This will let the Court know who the attorneys are since we do not have immediate access to all files in every county).

RULE 4.11 AVAILABLE COURT DATES

When setting or resetting a case for trial, pre-trial, etc., please contact the Court Administrator in Ozona, Texas for available dates. Then, contact all other counsel and obtain a date that everyone is available.

a. Submit an Order Setting to the Court, with a Request for Setting when obtaining a trial date, or a letter when obtaining a pre-trial date, stating the date the parties have agreed to.

b. If you cannot obtain a date that is agreeable to all counsel, send your order Setting with a letter stating the dates that were given to opposing counsel and their reasons for not agreeing.

c. **ALWAYS ADVISE THE COURT IN YOUR REQUEST OR COVER LETTER THAT YOU HAVE CONTACTED THE OPPOSING COUNSEL AND THAT THEY ARE AVAILABLE FOR HEARING ON THE DATE YOU HAVE REQUESTED.**

RULE 4.12 ESTIMATED TIME FOR HEARING

When setting or resetting a case for trial, pre-trial, etc., please advise the Court the estimated time you will need for the hearing.

RULE 4.13 COURT FILES

The Court will set your case for hearing as quickly as possible. In an effort to do so, the Court may set your case in another county within the District, other than the county the case is filed in (Crockett, Sutton, Pecos, Reagan and Upton Counties). When a case is heard out of county, but within the district, it is the attorney's responsibility to transport the case file to the judge in the County for which the hearing will be held. The attorney shall contact the District Clerk in the county for which the case is filed to let them know they will be picking the file up to transport it to another county for hearing. It is the attorney's responsibility to return the file to the District Clerk's Office the same day, unless prior arrangements are made with the District Clerk.

RULE 4.14 CANCEL HEARINGS

If for any reason, you have to cancel a hearing, please contact the Court Administrator in Ozona, Texas as soon as possible.

RULE 4.15 TELEPHONE CONFERENCE

Hearings conducted by telephone conference call are acceptable and encouraged by the Court.

RULE 4.16 FAX AND ANSWERING MACHINE AVAILABLITY

Any attorney practicing in the 112th District Courts, if practicable, shall have access to a fax machine and answering machine that will be operative 24 hours a day, seven days a week. Said numbers shall be provided to the Courts, the Clerks of Court, and all opposing counsel. All communications between the Courts and attorneys sent via fax to the numbers provided shall be deemed received. This does not include filing documents with the District Clerk, unless the District Clerk has implemented an Electronic Filing Plan.

RULE 4.17 PARTIAL CIVIL INVALIDITY

In the event any of the foregoing rules or any part thereof is held to be invalid for any reason, such invalidity shall not affect the validity of the remaining rules and parts of rules, all of which have been separately numbered and adopted.

RULE 4.18 CONSTRUCTION OF RULES

Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine or neuter gender shall each include the other; and the singular and plural shall each include the other.

RULE 4.19 AUTHORITY FOR RULES

The foregoing rules of Practice are promulgated pursuant to rule 3A, T.R.C.P. and a copy of same has been furnished to the Supreme Court of Texas.

RULE 4.20 APPLICATION OF RULES

These rules shall supersede any prior local rules of practice. These rules shall become effective upon approval by the Texas Supreme Court.

SIGNED AND ORDERED FILED in the Minutes of the District Court in Pecos County this the 27 day of October, 2004.

JUDGE BROCK JONES
112th Judicial District Judge

APPROVED and SIGNED this the 1 day of Nov., 2004.

JUDGE STEPHEN B. ABLES
6th Administrative Judicial Region

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 06-9034

APPROVAL OF LOCAL RULES FOR THE DISTRICT COURTS OF MADISON COUNTY

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the following Local Rules for the District Courts of Madison County are approved.

In Chambers, this 22nd day of February, 2006.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Second Administrative Judicial Region of Texas

Olen Underwood
Presiding Judge

Kassi Cranfill
Regional Administrator

Nathan Jensen
Regional Assistant

February 15, 2006

Honorable Nathan L. Hecht
Justice, Supreme Court of Texas
Attn: Jody Hughes, Rules Attorney
P.O. Box 12248
Austin, Texas 78711

Re: Local Rules of the District Courts of Madison County, Texas

Dear Judge Hecht:

Pursuant to, and in accordance with Rule 3a, Texas Rules of Civil Procedure, and Rule 8, Regional Rules of Administration, Second Administrative Judicial Region of Texas, I am requesting approval by the Justices of the Supreme Court for the Local Rules of the District Courts of Madison County, Texas.

I hereby approve this addition of the Local Rules of the District Courts of Madison County, Texas. Please advise this office of the Courts actions.

Thank you for your usual courtesies.

Sincerely,

Olen Underwood
OU/kc

cc: Honorable Kenneth Keeling, 278th District Court

207 West Phillips, Third Floor ★ Conroe, Texas 77301
(936) 538-8176 ★ Fax (936) 538-8167
www.co.montgomery.tx.us/dcourts/2ndadmin

LOCAL RULES OF THE DISTRICT COURTS
OF
MADISON COUNTY, TEXAS

12th AND 278th JUDICIAL DISTRICTS

LOCAL RULES OF THE DISTRICT COURTS

OF

MADISON COUNTY, TEXAS

12TH & 278TH JUDICIAL DISTRICTS

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Local Rules of the District Courts of Madison County

PURPOSE

The Local Rules of the District Courts of Madison County have as their primary purpose the management of the court dockets in a fair, just, equitable and impartial manner. These rules are designed to be an aid in achieving that goal and to do so in a timely and economical manner.

RULE 1

APPLICATION, JURISDICTION AND ASSIGNMENT OF CASES

RULE 1.1 APPLICATION

These rules apply to all cases, civil, criminal, and family, of which the District Courts have exclusive jurisdiction in Madison County.

RULE 1.2 JURISDICTION

Exclusive jurisdiction of District Courts encompasses matters defined by the constitution, statute or case law as the sole province of District Courts.

RULE 1.3 ASSIGNMENT OF CASES

The District Clerk shall assign cases equally among the District Courts on a mandatory rotation basis unless specifically instructed otherwise by these rules or by the Board of Judges.

RULE 2

LOCAL ADMINISTRATIVE DISTRICT JUDGE, BOARD OF JUDGES AND RULES OF DECORUM

RULE 2.1 POWERS AND DUTIES OF LOCAL ADMINISTRATIVE DISTRICT JUDGE

A. Election of the Administrative Judge

Pursuant to Section 74.091 of the Texas Government Code, a majority of the District Judges will elect a Local Administrative District Judge for a one-year term at the December meeting of each year to commence on January 1st of the following year.

B. Duties

The Local Administrative District Judge will have the duties and responsibilities provided in Rule 9 of the Rules of Judicial Administration, the Regional Administrative Rules and these rules.

RULE 2.2 BOARD OF JUDGES

The Board of Judges shall consist of the Judges of the District Courts. The board shall meet to discuss and resolve questions that are of common concern to all of the members thereof. The Local Administrative District Judge or any member of the Board of Judges may call meetings of the board as needed. The Local Administrative District Judge shall preside over such meetings; and in his absence, a temporary Chairperson may be elected by a majority of the quorum.

RULE 2.3 RULES OF DECORUM

The Judges have a duty to maintain order and proper decorum in the courtroom. The Board of Judges have adopted the Rules of Decorum set forth in **Addendum 1** to these rules which shall apply to all attorneys and others appearing in the courtrooms of Madison County. The rules may be enforced by contempt or referral to the State Bar of Texas for grievance proceedings, or both, as the judge deems proper.

RULE 3

CIVIL CASES

RULE 3.1 GENERAL

All civil cases which the District Courts of Madison County have exclusive jurisdiction shall be filed in the District Clerk's office located at the County Courthouse, 101 West Main, Rm. 226, Madisonville, Texas 77864. Even numbers shall be assigned to cases filed in the 12th District Court and odd numbers shall be assigned to cases filed in the 278th District Court.

RULE 3.2 TRANSFER OF CASES; DOCKET EXCHANGE; BENCH EXCHANGE

A. Transfer

After assignment to a particular court, a case may be transferred to another court by order of the Judge of the court in which the case is pending with the consent of the Judge of the court to which it is transferred.

B. Exchange of Cases

The courts may at any time exchange cases and benches to accommodate their dockets or to expedite the court's trials, as permitted by law.

C. Previous Judgment or filing

Any claim for relief based upon a previous judgment shall be assigned to the court of original judgment. If a case is filed in which there is a substantial identity of parties and causes of action in a previously non-suited case, the later case shall be assigned to the court where the prior case was pending.

D. Consolidation

A motion to consolidate cases shall be heard in the court where the lowest numbered case is pending. If the motion is granted, the consolidated case will be given the number of the lowest numbered case and assigned to that court.

E. Severance

If a severance is granted, the new case will be assigned to the court where the original case is pending; however, a new file date and a new cause number will be assigned to the now severed case.

F. Presiding for another Judge

In all cases where a judge presides for another court, the case shall remain pending in the original court.

G. Prove-up Divorce Cases and Default Cases

Uncontested divorce cases, default judgments, or other uncontested matters, may be heard by either of the District Judges or the Judge of the County Court at Law, if the Judge assigned the case is unavailable, subject to the requirements of jurisdiction.

RULE 3.3 SERVICE OF PROCESS

The Courts have adopted a blanket order permitting private service of process pursuant to Rule 103 of the Texas Rules of Civil Procedure. Applications for approval to be added to the list shall be presented to the local administrative judge. A list of approved private process servers is maintained in the District Clerk's Office.

RULE 3.4 REQUESTS OF THE DISTRICT CLERK

A. Written Requests

All parties desiring copies of documents from the District Clerk shall furnish the clerk return envelopes properly addressed and stamped. Except as provided elsewhere in these rules, no conformed copies shall be made or furnished nor shall searches or research be performed for counsel or the public, free of charge. All mail received with postage due will be returned to sender.

B. Telephone Requests

The court clerk shall limit response to telephone requests for information to the following:

If answer has been filed.

Existence of case on file.

Return of service and date.

Correct style of case when correct case number is supplied.

If an order has been signed.

Whether or not a jury fee has been paid and date of payment.

Whether or not a specific document has been filed. But this does not authorize a fishing expedition.

RULE 3.5 GUARDIANS AND ATTORNEYS AD LITEM

When it is necessary for the court to appoint a guardian ad litem for minor or incompetent parties or an attorney ad litem for absent parties, independent counsel, not suggested by any of the parties or their counsel, will be appointed. However, the court may appoint an attorney who is already counsel of record for one of the parties if the court finds that no conflict of interest or other circumstances exist which would prevent such attorney from providing adequate representation for such minor, incompetent or absent defendant.

RULE 3.6 DOCKET SETTINGS

A. Court Coordinator/Administrator

Each court shall appoint a court coordinator/administrator. It shall be the duty of each court coordinator/administrator to:

Provide the court, the clerk assigned to that particular court and the general public with a printed docket of the cases set for a hearing for each day of court;

Notify all counsel of settings and rulings of the court as is provided by these rules or at the direction of the court;

Prepare scheduling orders for cases assigned to their court;
Coordinate all setting requests; and

Coordinate with the District Clerk's office concerning jury trials and jury requirements.

B. Requests for Settings

Requests for hearings and trials in the District Courts shall be made in writing to the court in which the matter is pending, and the attorneys making such request shall serve all counsel and parties appearing pro se with notice of the setting request. The setting request shall be in the form set forth in **Addendum 2**, attached to these rules. If the setting request is approved, the court coordinator will confirm the setting in writing.

C. Docket Control Orders

Each court may generate docket control orders for each civil case pending. The order shall contain a trial setting, cut off date for discovery, pretrial conference date and any other requirements as established by each individual court.

D. Calendars

Court calendars are established by the 12th and 278th Judicial District Courts for each calendar year that set forth the availability of the respective courts for trials or other hearings in the counties of Madison, Walker, Grimes and Leon. Copies of these calendars may be obtained from the District Clerk or Court Coordinator.

RULE 3.7 Pre-Trial Motions

A. Pre-Trial Motions (Non Summary Judgment)

Form

Motions and responses shall be in writing and shall be accompanied by a proposed order granting or denying the relief sought. The proposed order shall be a separate instrument.

Response

Responses shall be in writing. Responses shall be filed before the hearing date. Failure to file a response may be considered a representation of no opposition. A reply may be filed at any time after a response is filed prior to the court's ruling.

Certificate of Conference

Opposed motions and responses shall contain a Certificate of Conference indicating that the counsel involved have attempted to resolve the dispute prior to filing of the motion or response, the date of such attempt and the manner of communication of such an attempt, or any other requirement of the court.

B. Pre-Trial Motions (Summary Judgment Rule 166(c) TRCP)

Motion

The motion shall state the specific grounds thereof in numerical order and shall state the specific facts relied upon in each ground, identify the source of those facts, and specify where in the summary judgment evidence the facts are found. The motion shall contain a clear and concise argument for each ground with appropriate citations to authorities relied upon and specific references to the summary judgment evidence.

Response

The response shall address the motion in the same numerical order established in the motion for summary judgment. The response shall state the specific facts relied upon, identify the source of those facts, and specify where in the summary judgment evidence the facts are found. The response shall set out a clear and concise argument with appropriate citations to authorities relied upon and specific references to the summary judgment evidence.

RULE 3.8 ALTERNATE DISPUTE RESOLUTION AND MEDIATION

A. Alternate Dispute Resolution

In order to encourage the early settlement of disputes and to carry out the responsibilities of the courts as set out in Chapter 154 of the Texas Civil Practices and Remedies Code, appropriate alternative dispute resolution procedures will be encouraged and utilized.

B. Mediation

The courts encourage mediation in order to facilitate the settlement of disputes and litigation. Each court shall adopt a procedure for the use of mediation in all civil cases. It is in the sound discretion of the trial court whom to use as a mediator and the procedures for same.

RULE 3.9 CONTINUANCES

Any motion for continuance of the trial setting shall be presented to the court pursuant to the Texas Rules of Civil Procedure. The proposed order granting or denying such motion shall contain a provision for resetting the case for trial on a specific date and time.

RULE 3.10 SETTLEMENTS

All trial counsel are required to make a bona fide effort to settle cases at the earliest possible date before trial. The

court will expect counsel to confer with his/her client and with opposing counsel concerning settlement offers. When an attorney settles or dismisses a case that is set for trial, he shall give notice to the court as soon as possible.

RULE 3.11 MOTIONS IN LIMINE

The **Standing Order in Limine** attached hereto as **Addendum 3** shall apply to all civil cases tried in the District Courts of Madison County and should counsel desire that additional matters be included a motion will be required.

RULE 3.12 JURY CHARGE, DEFINITIONS, INSTRUCTIONS AND QUESTIONS

Each party shall prepare in proper written form and present to the court prior to trial or the jury selection all jury charge definitions, instructions and questions which are expected to be raised by the pleadings and evidence and upon which the party has an affirmative burden. The charge shall be provided in both written form and on a 3.25 computer disc, CD-ROM, or other pre-approved media.

RULE 3.13 VOIR DIRE

The District Clerk shall align the Juror Information Cards in numerical order and seat the panel in numerical order. The Judge will qualify the panel and accept or reject any excuses. After the final panel is determined, the attorneys must make their decision on whether or not a shuffle will be requested. The court will recess the panel to give the clerk time to copy the jury cards and to make a new list of names of jurors, either in shuffled order or in numerical order. When the new list is completed and cards copied the clerk will re-seat the jury according to the list and voir dire will begin. The attorneys and judge will be furnished a copy of the list and jury information cards.

Challenges for cause will be made after all parties are completed with their voir dire examination of the panel. After all counsel have completed their voir dire examination, the attorneys will be asked to approach the Bench. Counsel will be asked in turn for the Juror Number of the jurors whom they wish to challenge for cause. If, in the opinion of the Court, sufficient evidence has been adduced to support a ruling, the challenge will be granted or denied without further questions. Otherwise, the panel member will be called to the Bench and each counsel will be allowed a few questions. The panel member will then be excused to return to their seat, and the challenge will be ruled on outside the presence of the panel member.

If any panel member responds to questions during voir dire examination in a manner which makes it clear that they possess such strong opinions that a challenge for a cause will clearly be good, and there exists a possibility that further responses may "poison" the entire panel, counsel should diplomatically terminate the inquiry and avoid further inquiries in the presence of the panel. If adverse counsel has a good-faith belief that the panel member can be rehabilitated, it will be pursued on an individual basis after the general voir dire examination.

Counsel will be allowed to tell the panel what their contentions are in order to provide a context for their voir dire examination. Detailed recitations of facts should be reserved for opening statement.

If panel members ask counsel about the existence of insurance or any other specific factual matter, counsel should direct the question to the Court.

RULE 3.14 DISMISSAL DOCKET; INVOLUNTARY DISMISSALS

A. Time Standards for Civil Case Dispositions

A. Civil Jury Cases

All civil jury cases shall be tried or dismissed within 18 months from appearance date.

B. Civil Non Jury Cases

All civil non-jury cases shall be tried or dismissed within 12 months from appearance day.

B. Dismissal Dockets

All cases not brought to trial or otherwise disposed of which have been on file for more than the specified time period as established by these rules shall be placed on the dismissal docket by the Court.

C. Notice

When a case has been placed on the dismissal docket, the court shall promptly send notice of the court's intention to dismiss for want of prosecution to each attorney of record and pro se party whose address is shown in the clerk's file. A copy of such notice shall be filed with the papers of the cause.

D. Motion to Retain

Unless a written motion to retain has been filed prior to the dismissal date as set forth in the notice of intention to dismiss, such case shall be dismissed. Notice of the signing of the order of dismissal shall be given as required by Rule 165a of the Texas Rules of Civil Procedure. Failure to mail notices as set out above shall not affect any of the periods mentioned in Rule 306a of the Texas Rules of Civil Procedure except as provided in that rule.

E. Motion for Reinstatement

A motion for reinstatement after dismissal shall follow the procedure and be governed by the provisions of Rule 165a of the Texas Rules of Civil Procedure relating to reinstatement.

RULE 4

FAMILY LAW CASES

RULE 4.1 GENERAL

The filing, assignment, and transfer of cases under the Family Code shall be in accordance with Rule 1 of these rules. All cases filed pursuant to the Family Code, shall be governed by Rule 3 and 4 of these rules.

RULE 4.2 TIME STANDARDS FOR FAMILY LAW CASE DISPOSITION

Cases shall be tried or dismissed within 6 months from the appearance date or within 6 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later. Cases not concluded within these time periods will be placed on the Dismissal For Want of Prosecution Docket.

RULE 4.3 JUVENILE CASES

The Juvenile Board of Madison County has designated the County Court as the Juvenile Court of Madison County. Rules for the disposition of juvenile cases will be adopted by the Juvenile Court in conformity with Rule 1 of the Second Administrative Judicial Region of Texas Regional Rules of Administration and Title 3 of the Texas Family Code. These cases shall be filed in the District Clerks office pursuant to rules established by the Juvenile Judge and District Clerk, copies of these rules may be obtained from the Juvenile Judge.

RULE 4.4 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES CASES (Child Protective Services)

Disposition of Texas Department of Family and Protective Services {CPS} cases shall be in conformity with those provisions set forth in Title 5 of the Texas Family Code. These cases shall be filed in the District Courts of Madison County in accordance with Rule 1 of these Rules.

RULE 4.5 TEMPORARY ORDERS

A. Except in emergencies when the District Clerks office is not open for business, no application for immediate or temporary relief shall be presented to a judge until it has been filed and assigned to a Court. If the judge of the court to which such case is assigned is absent or is occupied with other matters, the coordinator of the assigned court shall insert a date and hour for hearing in any form of a proposed order before such application may be presented to any other Judge, who may sit for the Judge of the court in which the case is pending and shall make all writs and process returnable to the assigned court.

B. Whenever immediate action of a Judge is required in an emergency when the clerk's office is not open for business, the case shall at the earliest practicable time be docketed and assigned to a court, and all writs and process shall be returnable to the assigned court. If the Judge of such court is not available to hear the application for temporary relief at the time set, any court with jurisdiction may preside in this case.

RULE 4.6 EX PARTE ORDERS

A. All applications for ex parte relief shall be presented to the court to which the case is assigned, unless emergency circumstances exist and then shall be presented in accordance with Paragraph 4.5.B.

B. In any case in which counsel of record for the nonmoving party has been designated, said application shall be presented to said counsel by fax, hand delivery, or other method of service designed to give opposing counsel immediate notification, in addition to the requirements of Rule 21a TRCP.

RULE 4.7 STANDING TEMPORARY RESTRAINING ORDERS

A. The court hereby ORDERS that in all divorce suits filed, a Standing Temporary Restraining Order in the form attached hereto as **Addendum 6** is imposed on all parties to the suit. All petitions for Divorce shall contain a statement signed by the Petitioner evidencing receipt of a copy of the Standing Temporary Restraining Order, and in the absence of such paragraph, it shall be **DEEMED** that Petitioner, by invoking the Court's jurisdiction, has constructive notice of the Standing Temporary Restraining Order and subjects himself or herself to it.

B. The clerk of this court shall attach, to each citation to be served, a copy of the Standing Temporary Restraining Order. Said Standing Temporary Restraining Order shall become effective on the Respondent when citation is served, a waiver of citation is signed, or actual notice in some other manner is received.

C. The Standing Restraining Order remains effective until the temporary hearing, if any, or if a temporary hearing is not requested by either party, until the final hearing. Should a temporary hearing be requested by either party, then the court shall determine whether the Standing Temporary Order shall remain in effect until the final hearing and absent a ruling of the court to the contrary, the Standing Restraining Order shall remain effective until the final hearing.

RULE 4.8 PROPOSED PROPERTY DIVISIONS AND PROPOSED SUPPORT DECISIONS

A. Filing

Proposed Property Division Statements shall be filed in all domestic relations cases related to divorce. **Proposed Support Decision Statements** shall be filed in all cases involving modification of conservatorship, support or periods of possession. These proposals shall be furnished in the format set forth in **Addendum 4 and 5** attached to these rules as set forth in paragraphs B. and C.

B. Temporary Orders

In any hearing for temporary orders in which child support or spousal support is an issue, completion and exchange of **Proposed Support Decision Statements** is required prior to commencement of the hearing in the form set forth in **Addendum 5** attached to these rules.

C. Trial

A party's final Proposed Support Decision Statements regarding child support and a Proposed Property Division Statement shall be exchanged no later than ten (10) days before trial, or as required by the docket control order, and filed with the court before the commencement of trial. This proposed division of assets and liabilities and the proposed findings regarding support shall be furnished in the format set forth in **Addendum 4 and Addendum 5** attached to these rules.

D. Failure to file Proposed Property Division and Proposed Support Decision Statements.

Failure of either party to file Proposed Property Division and Support Division Statements may result in the court adopting as stipulated the information filed by the complying party. The non-complying party will be prohibited from contesting the accuracy of the information presented by the complying party. If both parties fail to comply with these rules, the court may dismiss the case from the docket.

RULE 4.9 PARENT EDUCATION AND COUNSELING

Referral may be made in suits affecting the parent-child relationship requiring the parents' attendance at an educational program for divorcing parents. In the discretion of the court, such a referral may also be made for parents involved in modification or enforcement litigation. Counseling may also be ordered in appropriate cases as authorized by the Family Code, including referral to a family violence program pursuant to a protective order under Chapter 71 of the Family Code.

RULE 4.10 DISCOVERY

In all cases the following items shall be exchanged within thirty days, without objection, upon a written request of counsel. Failure to exchange these items may result in sanctions being imposed on the attorney, or party, or both, as the court deems proper, to wit:

Income tax returns for the previous two years.

Copies of all insurance polices, including home, auto, life and medical.

Copies of all promissory notes, deeds of trust and deeds evidencing ownership of real estate, including contract for deeds and time sharing contracts.

Copies of all stocks, mutual fund participation and investment portfolios held by the party, in the name of

the parties, or for the benefit of either parties.

Copies of all documents concerning employee benefits, retirement benefits and pension funds.

The preceding six (6) months statements for all credit card accounts in the name of the parties, or either party.

Wage statements or statement showing year to date earnings of the party.

RULE 4.11 CHILD SUPPORT LOCAL REGISTRY

Pursuant to § 154.241 of the Texas Family Code, the District Clerk of Madison County is designated as the Local Registry to receive a court ordered child support payment or payment otherwise authorized by law.

RULE 5

CRIMINAL CASES

RULE 5.1 GRAND JURIES AND ASSIGNMENT OF CASES

A. Grand Juries

The 12th Judicial District Court shall select and impanel the Grand Jury for the January term of court and the 278th Judicial District Court shall select and impanel the Grand Jury for the July term of court. The grand juries shall hold all of their meetings in the Madison County Courthouse, in the grand jury room. The commissioner method of selection shall be utilized.

B. Grand Jury Minute Book

The rules regarding presentment of indictments by a Grand Jury to the District Court are set forth in Articles 20.21 and 20.22 of the Code of Criminal Procedure. Article 20.21 requires that the Foreperson of the Grand Jury shall deliver the indictments to the Judge or District Clerk and that at least nine members of the grand jury must be present when the delivery is made. Article 20.22 requires that the fact of presentment be entered upon the minutes of the court. The "minutes of the court" are contained in the Grand Jury Minute Book. The Grand Jury Minute Book shall remain in the custody of the District Clerk at all times except when the Grand Jury is in session. The Grand Jury Minute Book is not a secret book or document.

When the grand jury begins a session, the District Clerk shall have all members present sign the Grand Jury Minute Book as proof of their presence at the session and to make a record of the fact that a quorum was present at the session. The District Clerk shall then deliver the book to the Secretary of the Grand Jury. When a true bill of indictment is voted in the affirmative by at least nine members of the Grand Jury, the following information shall be entered by the Secretary of the Grand Jury in the Grand Jury Minute Book, and nothing else, to wit:

1. the date of the session;
2. name of the person indicted;
3. offense; and
4. names of the witnesses upon which the indictment is founded.

If the defendant is not in custody or under bond at the time of the presentment of the indictment, upon request of the District Attorney, the entry of the name of the defendant in the book may be delayed until such time as the capias is served and the defendant is placed in custody or under bond, at which time the name of the defendant will be entered in the book by the District Clerk. It is the duty of the District Clerk to verify that the indictments delivered to the clerk conform with the information contained in the Grand Jury Minute Book. If there is a variance, it should be called to the attention of the Secretary, Foreperson and District Attorney immediately.

When a defendant is "no-billed", meaning that a case was presented to the grand jury regarding an individual and less than nine affirmative votes were given for a true bill of indictment, a **Certificate of No-Bill** shall be signed by the Foreperson certifying that the case was presented to the Grand Jury and that a no-bill was returned. The District Clerk shall handle the certificates as follows:

A. Defendant Under Arrest: If the defendant is under arrest, a copy of the certificate shall be delivered to the Sheriff and the Defendant immediately.

B. Defendant Under Bond: A copy of the certificate shall be delivered to the

surety (bondsman) and the defendant immediately.

C. All other certificates shall be held by the clerk under seal, unless ordered released by the District Court.

C. Assignment of Cases After Indictment

Except as otherwise provided in this Rule, the Clerk shall equally distribute every criminal case filed by indictment into the two District Courts. Even numbered cases shall be assigned to the 12th District Court and odd numbered cases shall be assigned to the 278th District court.

Capital cases shall be assigned on an independent, rotational basis among the District Courts.

D. New Indictments After Assignment

After assignment, the clerk shall assign any new indictment against a defendant to the same court.

E. Re-indictments

The clerk shall assign any re-indictment of the same defendant to the same court in which the prior indictment was assigned.

F. Co-Defendant Indictment

The clerk, after random assignment of an indictment to a court shall assign any co-defendant subsequently indicted to the same court in which the first co-defendant's indictment was assigned.

G. Information to the District Clerk

The District Attorney shall note on a non-substantive part of the indictment the following information:

Whether there are other pending indicted cases on the defendant;

Whether the indictment is a re-indictment and;

The names of any co-defendants not named in the indictment.

The District Attorney shall also furnish the clerk information in writing as to whether or not a non-standard bond will be sought by the State and the factors supporting same. Failure to furnish the information will result in a bond amount in accordance with the Bond Schedule.

RULE 5.2 STANDING BOND SCHEDULES

Bonds will be set on each criminal case in accordance with the Bond Schedule attached hereto as **Addendum 7** unless the District Attorney furnishes information in writing to the court justifying an exception. The court may also, in a proper case, dispense with the requirement of sureties and require only the personal recognizance of the defendant, with or without conditions.

RULE 5.3 BOND SURRENDER

Sureties requesting a release on their liability on a Bail Bond must complete the Affidavit to Release Surety and present the completed affidavit to the District Judge that the Defendants case is assigned to. The form and requirements for release is attached hereto in **Addendum 8.** The District Attorney shall be served with a copy of the Affidavit.

RULE 5.4 BOND FORFEITURE

Bonds will be forfeited on all defendants who do not appear in court when scheduled or otherwise ordered to appear in court. The name of the Defendant will be called three times at the courtroom door by the Bailiff and if there is no answer the bond will be forfeited and a capias issued by the clerk for his arrest. It is the duty of the District Clerk to prepare a Judgment Nisi with the aid of the District Attorney. The Judgment Nisi proceedings will be docketed as a civil matter in the court that ordered the forfeiture and the defendant and his sureties shall be served with citation. After the surety files an answer or defaults, the district clerk shall notify the proper court coordinator for a trial setting to be docketed. The sureties shall be given forty-five days advance notice of any trial setting.

RULE 5.5 POST CONVICTION PROCEEDINGS

The clerk shall file any motion to revoke probation or any post-conviction application for writ of habeas corpus in the court having granted probation or entered the judgment in the case.

RULE 5.6 ARRAIGNMENT

Defendants shall be arraigned at the earliest possible time after indictment. Presence of the defendant is mandatory at arraignment unless excused by the court. At arraignment a scheduling order shall be entered setting discovery deadlines, dates of pretrial hearing, docket call and trial date.

RULE 5.7 SCHEDULING ORDER

Each court will adopt a scheduling order that shall be delivered to the defendant and counsel at arraignment. The defendant and his counsel and counsel for the state shall sign the scheduling order.

RULE 5.8 STANDING DISCOVERY ORDER

A standing discovery order is entered in each case at time of arraignment. The discovery order shall set forth procedures for the exchange of information, evidence inspection, expert designations and deadlines to comply with the discovery order. The Standing Discovery Order is set forth in **Addendum 9**, attached hereto.

RULE 5.9 PRETRIAL HEARING

The pretrial hearing shall be held within sixty (60) days from date of arraignment. All matters preliminary to actual trial on the merits must be brought to the attention of the court at this hearing.

RULE 5.10 DOCKET CALL

The court coordinator shall prepare a list of all cases on the trial docket. The defendant and his counsel shall be present and announce ready or not ready. An announcement of "not ready" must be accompanied by a motion for continuance.

RULE 5.11 MOTIONS FOR CONTINUANCE

All motions for continuance, whether filed by the State or the Defendant, must comply with the applicable law contained in the Code of Criminal Procedure and must be presented to and considered by the court in accordance with the scheduling order. Except for good cause shown and upon compliance with these rules, the court shall not consider any motion for continuance on the scheduled trial date.

RULE 5.12 PLEA BARGAINS

If a plea bargain is made on a case set for trial, the plea must be submitted to the court prior to the date jury selection is to commence. The courts will not approve a plea bargain that is not submitted and completed prior to date of jury selection.

RULE 5.13 STANDING ORDER IN LIMINE

The Standing Order in Limine attached hereto as **Addendum 10** shall apply in all felony jury trials in the District Courts of Madison County.

RULE 5.14 VOIR DIRE

The District Clerk shall align the Juror Information Cards in numerical order and seat the panel in numerical order. The Judge will qualify the panel and accept or reject any excuses. After the final panel is determined, the attorneys must make their decision on whether or not a shuffle is requested. The court will recess the panel to give the clerk time to copy the jury cards and to make a new list of names of jurors, either in shuffled order or in numerical order. When the new list is completed and cards copied the clerk will re-seat the jury according to the list and voir dire will begin. The attorneys and judge will be furnished a copy of the list and jury information cards.

Challenges for cause will be made after all parties are completed with their voir dire examination of the panel. After all counsel has completed their voir dire examination, the attorneys will be asked to approach the Bench. Counsel will be asked in turn for the Juror Number of the jurors whom they wish to challenge for cause. If, in the opinion of the Court, sufficient evidence has been adduced to support a ruling, the challenge will be granted or denied without further questions. Otherwise, the panel member will be called to the Bench and each counsel will be allowed a few questions. The panel member will then be excused to return to their seat, and the challenge will be ruled on outside the presence of the panel member.

If any panel member responds to questions during voir dire examination in a manner which makes it clear that they possess such strong opinions that a challenge for a cause will clearly be good, and there exists a possibility that further responses may "poison" the entire panel, counsel should diplomatically terminate the inquiry and avoid further inquiries in the presence of the panel. If adverse counsel has a good-faith belief that the panel member can be rehabilitated, it will be pursued on an individual basis after the general voir dire examination.

RULE 5.15 TIME STANDARDS

Criminal cases shall be completed within 12 months from earliest date of arrest or indictment.

RULE 5.16 FAIR DEFENSE ACT

The rules adopted by Madison County concerning the Fair Defense Act may be obtained from the Local Administrative Judge.

RULE 6

CONFLICTING ENGAGEMENTS OF ATTORNEYS

A. Attorney already in trial in another court.

When informed that an attorney is presently in trial, the Court will determine where and when assigned. This information will be verified upon request of opposing counsel. The case will be placed on "hold" or reset, depending upon when the attorney will be released. If the attorney is not actually in trial as represented by the attorney or his agent, the case will be tried without further notice.

B. Attorney assigned to two courts for the same date:

It is the duty of every attorney to call the affected Judges attention to all dual settings as soon as they are known. Insofar as is practicable, Judges should attempt to agree on which case has priority, otherwise the following priorities shall be observed by the Judges of the respective courts:

Criminal cases

Cases given preference by statute

Preferentially set cases

Case set at earliest date

Case with earliest filing date

Cases in Metropolitan areas should yield to courts in rural areas

If the conflict cannot be resolved between the two judges, the Local Administrative Judge or the Regional Presiding Judge will resolve the conflict.

C. Designation of Attorney in Charge

Every case shall have an attorney in charge designated.

RULE 7

ATTORNEY VACATIONS

A. DESIGNATION OF VACATION

Subject to the provisions of subparts B and C of this rule, an attorney may designate not more than four weeks of vacation during a calendar year as vacation, during which that attorney will not be assigned to trial or required to engage in any pretrial proceedings. This rule operates only where lead counsel, as defined by T.R.C.P., is affected, unless the trial court expands coverage to other counsel.

B. SUMMER VACATIONS

Written designation for vacation weeks during June, July, or August must be filed with the District Clerk by May 15. Summer vacations so designated will protect the attorney from trials during those summer weeks, even if an order setting the case for trial was signed before the designation was filed.

C. NON-SUMMER VACATIONS

Written designations for vacations in months other than June, July, or August must be filed with the District Clerk by February 1. Non-summer vacation weeks may not run consecutively for more than two weeks at a time. Non-summer vacation weeks so designated will not protect an attorney from a trial by an order signed before the date the designation is filed. (Source Rule 11 Second Region)

RULE 8

JUDGES VACATION

If a Judge will be out of the District for a month or more, for vacation, attending a seminar or illness he/she shall notify the Local Administrative Judge and the Presiding Judge of the Second Administrative Region so that the business of the court can be taken care of during any such absence.

RULE 9

LAWYER'S CREED

The Lawyer's Creed is applicable in all cases tried in the District Courts or County Court at Law of Madison County. A copy is attached hereto as **Addendum 11.**

RULE 10

ADOPTION, APPROVAL AND NOTICE

RULE 10.1 ADOPTION

These rules are adopted by the District Judges for all purposes. All previous rules of the District Court of Madison County are hereby repealed.

RULE 10.2 APPROVAL

Upon approval by the Judge of the Second Administrative Region and the Supreme Court of Texas, these rules shall become effective immediately, and so long thereafter until amended, repealed or modified. Each numbered or lettered paragraph of these rules shall be considered to be separate and distinct from all other portions hereof, and if any portion should be declared by a higher court to be improper, such declaration will not affect any other portion not so declared to be improper.

RULE 10.3 NOTICE

The District Clerk is directed to furnish a copy of these rules to the Supreme Court of Texas pursuant to Rule 3 (a) of the Texas Rules of Civil Procedure and to record these Rules in the Civil Minutes of the 12th and 278th District Courts of Madison County, Texas.

Approved on this the 17th day of January 2006.

William L. McAdams
District Judge
12th Judicial District

Kenneth H. Keeling
District Judge
278th Judicial District

APPROVAL BY THE SECOND ADMINISTRATIVE REGIONAL JUDGE

Approved on the ____ day of January 2006 by Judge Olen Underwood, Regional Judge for the Second Administrative Judicial Region of the State of Texas.

_____

Judge Olen Underwood
Presiding Judge

ADDENDUM 1

RULES OF DECORUM

RULE 1: OPENING PROCEDURE

Immediately before the scheduled time for the first court session on each day, the bailiff shall direct all persons present to their seats and shall cause the courtroom to come to order. As the Judge enters the courtroom, the bailiff shall state:

"Everyone rise, please."

And while everyone is still standing, the bailiff shall announce:

"The _____ District Court of Madison County, Texas is now in session, Judge _____ presiding. Be seated, please."

RULE 2: RECESS

When the Judge announces a recess, the bailiff shall state:

"Everyone rise, please."

And all shall remain standing until the Judge leaves the courtroom, whereupon the bailiff shall announce:

"This Court is recessed until _____ (a certain time.)"

In reconvening after a recess, the bailiff shall call the courtroom to order and request everyone to rise as the Judge enters, and shall then state:

"Be seated, please."

Before a recess of a jury trial, the jury will be excused, and all other persons present shall rise while the bailiff conducts the jury from the courtroom into the jury room.

After a recess, the bailiff shall direct all jurors to the jury room and shall call the courtroom to order and request everyone to rise as the Judge enters, as in non-jury trials. After everyone is reseated, the jury shall be returned to the jury box from the jury room and everyone except the judge will rise again until the jury is seated.

RULE 3: GENERAL RULES OF COURTROOM CONDUCT

All officers of the court except the Judge, and jurors, and all other participants except witnesses, who have been placed under the rule, shall promptly enter the courtroom before the scheduled time for each court session. When the bailiff calls the court to order, complete order should be observed.

In the courtrooms, there shall be:

No tobacco used.

No chewing gum used.

No reading of newspaper or magazines.

No bottles, cups or beverage containers except court water pitchers and cups.

No edibles.

No propping of feet on tables or chairs.

No noise or talking that interferes with court proceedings.

The Judge, the attorneys, and other officers of the court will refer to and address other court officers or participants in the proceedings respectfully and impersonally, as by using appropriate titles and surnames rather than first names. The form of address toward the Judge shall be ("Judge," or "Your Honor").

The oath will be administered in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.

All officers of the court shall dress appropriately for court sessions.

RULE 4: CONDUCT OF ATTORNEYS

Attorneys should observe the letter and spirit of all canons of ethics, including those dealing with discussion of cases with representatives of the media and those concerning improper *ex parte* communications with the Judge.

Attorneys should advise their clients and witnesses of local Rules of Decorum that may be applicable to them.

All objections, arguments, and other comments by counsel shall be directed to the Judge, or jury and not to opposing counsel.

While another attorney is addressing the Judge, or jury, an attorney should not stand for any purpose except to claim the right to interrupt the attorney who is speaking.

Attorneys should not approach the bench without leave of court and must never lean on the bench.

Attorneys shall remain seated at the counsel tables at all times except:

a) **When the Judge enters or leaves; and**

b) **When addressing the Judge, or jury; and whenever it may be proper to handle documents, exhibits, or other evidence. (Leave of court is not required)**

Attorneys should anticipate any need to move furniture, appliances, or easels, and should make advance arrangements with the bailiff. Tables should not be moved without leave of court.

Only attorneys and parties are permitted to sit at the counsel tables. All secretaries, paralegals, investigators and other personnel must remain outside the bar unless granted specific leave of court to enter.

ADDENDUM 2

NO. _____

_____	§	IN THE DISTRICT COURT OF
_____	§	
VS.	§	MADISON COUNTY, TEXAS
_____	§	
_____	§	12/278th JUDICIAL DISTRICT

SETTING REQUEST

TYPE OF SETTING REQUESTED:

_____ Hearing on Motion(s) for _____
_____ Pre-Trial Hearing
_____ Bench Trial
_____ Jury Trial
_____ Other _____

REQUESTED DATE OF SETTING: _____

ESTIMATED AMOUNT OF COURT TIME REQUIRED: _____

REQUESTING ATTORNEY:

Name: _____ (plaintiff/defendant)
Address: _____ (petitioner/respondent)
_____ (SPECIFY ONE)
Phone: _____ Fax: _____

ALL OTHER ATTORNEYS OF RECORD (or unrepresented parties):

Name: _____ (plaintiff/defendant)
Address: _____ (petitioner/respondent)
_____ (SPECIFY ONE)
Phone: _____ Fax: _____

Name: _____ (plaintiff/defendant)
Address: _____ (petitioner/respondent)
_____ (SPECIFY ONE)
Phone: _____ Fax: _____

I certify that discussions of the matter to be set have been held or would not be productive, and thus without requesting a setting a disposition will not likely occur.

I certify that a copy of this setting request has been mailed/delivered to all other attorneys/parties of record.

Date: _____

Name of Requesting Attorney
State Bar No. _____

Original to District Court Coordinator: Copy to District Clerk.

ADDENDUM 3

STANDING ORDER IN LIMINE FOR TRIAL OF CIVIL JURY CASES

During the trial of any civil jury case in the District Court, unless and except to the extent that the operation of this order shall have been suspended with reference to such specific trial, no attorney shall make mention, refer to or suggest any of the matters hereinafter set forth in the presence or hearing of the jury, the venire, or of any member of either without first approaching the bench and securing a ruling from the Court authorizing such reference. In addition, each attorney shall admonish the client, client's representatives and all non-adverse witnesses the attorney may call to testify similarly to refrain from any such statement, reference or suggestion unless same is essential to respond truthfully to a question asked by opposing counsel.

The matters to which reference is prohibited by this order are as follows:

1. **Insurance.** Unless an insurance company is a named Defendant, that the Defendant is or is not protected, in whole or in part, by liability insurance, or that defense counsel was retained by, or all or any part of the costs of defense, or of any resulting judgments, are or will be paid by an insurance company, or any other matter suggesting an involvement of any insurance company with the defense of the case.

2. **Jurors' Connection with Insurance Industry.** Inquiring of potential jurors as to their present or past employment or connection with the insurance industry, or present or past connection of any family member with the insurance industry, except that:

   a) If a potential juror's juror information card discloses employment in the insurance industry, such potential juror may be questioned concerning same.

   b) inquiry may be made of potential jurors concerning their experience (or that of members of their family), if any, reviewing, adjusting or allowing/disallowing claims, as long as no express reference is made to "insurance."

3. **Liability or Non-Liability for Judgment.** That the named Defendant may or may not have to pay any resulting judgment.

4. **Collateral Source.** That any portion of the damages sought by Plaintiff have been, or will be, paid by any collateral source, including but not limited to:

   a) health and accident or disability insurance.

   b) any employee benefit plan, formal or informal, including payment of wages for time not actually worked.

   c) social security or welfare.

   d) veterans or other benefits.

   e) provisions of medical services free of charge or for less than reasonable and customary charges, provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for Plaintiff (or whose medical records are offered by Plaintiff), or to any letter of protection securing any such charges.

5. **Retention of Attorney.** The time or circumstances under which either party consulted or retained an attorney provided that if any attorney referred a party to a health care provider who testifies in the case (or whose medical records are introduced by such party) such fact may be a subject of inquiry.

6. **Attorney's Fees.** That any party will have to pay attorneys' fees, or any reference to the amount or basis of any attorneys' fees, unless a claim for recovery of attorneys' fees in the case will be submitted to the jury.

7. **Income Taxes.** That any recovery will or will not be subject to income taxes, in whole or in part.

8. **Independent Medical Examination.** That the plaintiff offered to, or was or is willing to, undergo an examination by an independent physician or psychologist.

9. **Criminal Offenses.** That any party of witness has been suspected of, arrested for, charged with or convicted of any criminal offense unless there is evidence of a specific conviction that the Court has previously ruled is admissible in the case.

10. **Alcohol or Drug Use.** That any party or witness uses or abuses alcohol, tobacco, or any controlled substance, unless and until such alleged use or abuse is shown to be specifically relevant to the matters in controversy.

11. **Settlement Negotiations or Mediation.** Any negotiations, offers or demands with respect to any attempted settlement or mediation.

12. **Discovery Disputes.** Any reference to discovery disputes that arose during the preparation of the case for trial, any position taken by any party with respect thereto, or to the Court's rulings thereon.

13. **Prior Suits or Claims.** That any party has been a party to any prior lawsuit, or has asserted any prior claim, or that any prior claim, has been asserted against a party; provided that this clause does not prohibit inquiry about a prior injury that may have been the subject of a claim, as distinguished from the claim, suit or settlement with reference thereto, if the nature of injuries claimed in the present suit make the same relevant.

14. **Ex Parte Statements of Witnesses.** Any reference to any ex parte statement of any witness or alleged witness, other than an adverse party or agent of an adverse party, unless and until such witness has been called to testify and has given testimony conflicting with such ex parte statement. A deposition or a statement in business or medical records that have been approved up as required by the Rules of Evidence is not an ex parte statement.

15. **Testimony of Absent Witness.** Any statement or suggestion as to the probable testimony of any witness or alleged witness who is unavailable to testify, or whom the party is expected to testify by deposition, this provision does not apply to testimony contained in the deposition expected to be offered.

16. **Hearsay Medical Opinions.** Any hearsay statement offered for the truth of the statement by an allegedly injured person concerning any diagnosis or medical opinions communicated to such person by a physician or other health care provider.

17. **Photographs and Visual Aids.** Showing any documents, photographs or visual aids to the jury, or displaying same in such manner that the jury or any member thereof can see the same, unless and until the same has been tendered to opposing counsel, and has been admitted in evidence or approved for admission or use before the jury, either by the Court or by all Counsel.

18. **Requests for Stipulations.** Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.

19. **Requests for Files.** Any request or demand in the presence of the jury that opposing counsel produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over or allow examination of the contents of any file or briefcase (except that a party may demand to see a document used by a witness on the stand to refresh his/her recollection, or that a witness testifies that he/she has used previously to refresh his/her recollection).

20. **Discrimination.** Any argument that a party should be treated more or less favorably because of such party's race, gender, national origin, nationality, religion, marital status, occupation, or financial status (except in the second phase of a bifurcated trial).

21. **Social Cost of Award.** Any argument or suggestion that an award of damages will affect insurance premiums, the price of any goods or services, or the level of taxation.

22. **Hardship or Privation.** Any argument or suggestion that a failure to award damages will cause a Plaintiff privation or financial hardship.

23. **Golden Rule.** Any argument or suggestion that the jurors should put themselves in the position of a party.

24. **Counsel's Opinion of Credibility.** Any expression of counsel's personal opinion regarding the credibility of any witness.

25. **Effect of Answers to Jury Question.** Any argument that any finding or failure to find in response to a particular jury question will, or will not result in a judgment favorable to any party. This provision does not bar argument by counsel that a particular jury question should be answered in a particular way.

26. **Evidence Not Produced in Discovery Response to a Proper Request.** Calling any witness, or offering any document in evidence, if the identity of such witness or the document has not been disclosed in response to a proper discovery request. If a party has a good faith basis to urge that such witness or document should be received either because (a) no discovery request properly called for its disclosure, or (b) good cause existed for failure timely to disclose, such party shall first approach the bench and secure a ruling thereon. Counsel are advised that to the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial.

27. **Objections to Evidence Not Produced In Discovery.** Any objection based on failure to disclose evidence in pre-trial discovery. Any party desiring to urge any such objection shall request to approach the bench and urge such objection outside the hearing of the jury. To the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial, although the objection may be urged for the record outside the hearing of the jury at the time such evidence is offered in the event the Court has overruled the objection at pretrial.

W.L. McAdams
District Judge
12th Judicial District

Kenneth H. Keeling
District Judge
278th Judicial District

ADDENDUM 4

NO. _____

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
_____	§	12th/278th JUDICIAL DISTRICT
AND		
_____	§	MADISON COUNTY, TEXAS

PROPOSED PROPERTY DIVISION

PROPOSED COMMUNITY PROPERTY DIVISION

Property	Fair Market Value	Secured Debt Balance	To Wife Net Value	To Husband Net Value
1	$	$	$	$
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
TOTAL COMMUNITY PROPERTY	**$**	**$**	**$**	**$**

PROPOSED DIVISION OF UNSECURED COMMUNITY DEBTS

	Creditor	Debt Balance	To Wife	To Husband
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

15			
16			
17			
TOTAL UNSECURED COMMUNITY DEBTS	**$**	**$**	**$**
NET COMMUNITY	**$**	**$**	**$**
PERCENTAGES	**100.00%**	**%**	**%**

SEPARATE PROPERTY OF WIFE
(list)

SEPARATE PROPERTY OF HUSBAND
(list)

PROPOSED DISPOSITION OF OTHER ISSUES

(list)

AFFIDAVIT

I,_____, do hereby state upon my oath that I have read the above and foregoing document and that same is true and correct.

_____
Signature of Party

Sworn to and subscribed before me on this the __day of _____200__.

_____

Notary Public
State of Texas

Certificate of Service

I,_____, do hereby certify that a true and correct copy of the above and foregoing was served by certified mail (or hand delivery) on opposing counsel on this the ___day of _____200__.

_____

Signature of Attorney

ADDENDUM 5

NO. _____

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
_____		**12th/278th JUDICIAL DISTRICT**
AND	§	
_____		
AND IN THE INTEREST OF	§	**MADISON COUNTY, TEXAS**
_____		

PROPOSED SUPPORT DECISION AND INFORMATION

OF _____

GROSS MONEY EARNED PER MONTH:

(1) Gross wages and salary income	$	
(2) Commissions, tips and bonuses		
(3) Self-employment income (net of expenses Other than depreciation and tax credits)		
(4) Rental income (net of expenses other than Depreciation)		
(5) All other income actually received (specify)		
GROSS MONEY EARNED PER MONTH	**$**	**(A)**

ACTUAL DEDUCTIONS PER MONTH: (Attach most recent pay stub from each employer)

(1) Income tax withholding		
(2) FICA (Social Security)		
(3) Medicare		
(4) Health Insurance		
(5) Union Dues		
(6) Other (specify):		
TOTAL ACTUAL DEDUCTIONS PER MONTH	$	(B)
NET MONEY ACTUALLY RECEIVED PER MONTH SUBTRACT (B) FROM (A)	**$**	**(C)**

STATUTORY NET RESOURCES DEDUCTIONS ALLOWED PER MONTH:

(1) Income tax withholding for a single person Claiming one personal exemption and standard deduction.
(2) FICA (Social Security)
(3) Medicare
(4) Health Insurance attributable to the children
(5) Union Dues

STATUTORY NET RESOURCES DEDUCTIONS ALLOWED PER MONTH	**$**	**(D)**
STATUTORY NET RESOURCES PER MONTH. SUBTRACT (D) FROM (A)	**$**	**(E)**

TOTAL MONEY NEEDED PER MONTH BY ME AND MINOR CHILD(REN) LIVING WITH ME: (For items that are not paid monthly, express the amount as a monthly average.)

(1) Rent or house payment
(2) Real property taxes (omit if part of house payment)
(3) Residence maintenance (repairs, yard)
(4) Insurance-home or renters (omit if part of house payment)
(5) Utilities--Gas
(6) Utilities--Electric and water
(7) Telephone (including average long distance)
(8) Utilities--Garbage service
(9) Groceries and household items
(10) Meals away from home
(11) School lunches
(12) Dental and orthodontia
(13) Medical and prescriptions
(14) Laundry and dry cleaning
(15) Car payment
(16) Gas and vehicle maintenance
(17) Clothing and shoes
(18) Insurance--Car

(19) Insurance--Life	
(20) Insurance--Health (omit if payroll deduction)	
(21) Child care	
(22) Children's activities	
(23) Entertainment	
(24) Haircuts	
(25) Cable TV and newspaper	
(26) Total monthly payments on debts (list below at G and show total here)	
(27) Other (specify)	
TOTAL MONEY NEEDED PER MONTH	**$ (F)**

MONTHLY PAYMENTS ON DEBTS:

Description of Debt	Balance Now Owed	Date of Final Payment	Amount of Monthly Payment
	$		$

TOTAL MONTHLY PAYMENTS ON DEBTS	$	(G)
DIFFERENCE BETWEEN MONEY RECEIVED AND MONEY NEEDED SUBTRACT (F) FROM (C)	$	(H)
PRESUMED CHILD SUPPORT--MULTIPLY (E) BY THE GUIDELINE PERCENTAGE _____%	$	(I)

I,_____,would testify under oath in open court that the foregoing information is true and correct. I understand that at such a court hearing I may be required to prove these amounts by testimony and by records such as pay vouchers, cancelled checks, receipts, and bills.

SIGNED this ____day of _____200_.

_____
Signature of Party

I intend to ask the court to set support at $_____per month.

Signed this ____day of _____200_.

_____
Signature of Party or Attorney

Certificate of Service

I, certify that a true copy of the above was served on opposing counsel, via certified mail (or hand delivery) on the ___day of _____200_.

_____
Signature of Attorney

ADDENDUM 6

STANDING RESTRAINING ORDER

STANDING ORDER REGARDING CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES

No party to this lawsuit has requested this order. Rather, this order is a standing order of the Madison County District Courts that applies in every divorce suit and every suit affecting the parent-child relationship filed in Madison County. The District Courts of Madison County have adopted this order because the parties and their children should be protected and their property preserved while the lawsuit is pending before the court. Therefore, it is ORDERED:

1. **NO DISRUPTION OF CHILDREN.** Both parties are ORDERED to refrain from doing the following acts concerning any children who are subjects of this case:

   1.1 Removing the children from the State of Texas, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.
   1.2 Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled, without the written agreement of both parents or an order of this Court.
   1.3 Hiding or secreting the children from the other parent or changing the children's current place of abode, without the written agreement of both parents or an order of this Court.
   1.4 Disturbing the peace of the children.

2. **CONDUCT OF THE PARTIES DURING THE CASE.** Both parties are ORDERED to refrain from doing the following acts:

   2.1 Using vulgar, profane, obscene, or indecent language, or a coarse or offensive manner, to communicate with the other party, whether in person, by telephone, or in writing.
   2.2 Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
   2.3 Placing one or more telephone calls, at an unreasonable hour, in an offensive or repetitious manner without a legitimate purpose of communication, or anonymously.
   2.4 Opening or diverting mail addressed to the other party.

3. **PRESERVATION OF PROPERTY AND USE OF FUNDS DURING DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

   3.1 Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
   3.2 Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
   3.3 Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
   3.4 Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
   3.5 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personal property or real estate property, and whether separate or community, except as specifically authorized by this order.
   3.6 Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by this order.
   3.7 Making withdrawals from any checking or savings account in any financial institution for any

purpose, except as specifically authorized by this order.

3.8 Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

3.9 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by this order.

3.10 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

3.11 Taking any action to terminate or limit credit or charge cards in the name of the other party.

3.12 Entering, operating, or exercising control over the motor vehicle in the possession of the other party.

3.13 Discontinuing or reducing the withholding for federal income taxes on wages or salary while this suit is pending.

3.14 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance at the other party's residence or in any manner attempting to withdraw any deposits for service in connection with such services.

4. **PERSONAL AND BUSINESS RECORDS IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

4.1 Concealing or destroying any family records, property records, financial records, business records or any records of income, debts, or other obligations.

4.2 Falsifying any writing or record relating to the property of either party.

4.3 "Records" include e-mail or other digital or electronic data, whether stored on a computer hard drive, diskette or other electronic storage device.

5. **INSURANCE IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

5.1 Withdrawing or borrowing in any manner all or any party of the cash surrender value of life insurance policies on the life of either party, except as specifically authorized by this order.

5.2 Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or the parties' children.

5.3 Canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property of persons including the parties' minor children.

6. **SPECIFIC AUTHORIZATIONS IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are specifically authorized to do the following:

6.1 To engage in acts reasonable and necessary to the conduct of that party's usual business and occupation.

6.2 To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

6.3 To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation and medical care.

6.4 To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

7. **SERVICE AND APPLICATION OF THIS ORDER.**

The Petitioner shall attach a copy of this order to the original petition and to each copy of the petition. At the time the

petition is filed, if the Petitioner has failed to attach a copy of this order to the original petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented.

This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of the court. This entire order will terminate and will no longer be effective once the court signs a final order.

8. EFFECT OF OTHER COURT ORDERS. **If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail.** Any part of this order not changed by some later order remains in full force and effect until the court signs a final decree.

9. PARTIES ENCOURAGED TO MEDIATE. The parties are encouraged to settle their disputes amicable without court intervention. The parties are encouraged to use alternative dispute methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

THIS MADISON COUNTY STANDING ORDER REGARDING CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES SHALL BECOME EFFECTIVE ON THE DATE AND TIME A PARTY RECEIVES NOTICE HEREOF.

William L. McAdams
District Judge
12th Judicial District

Kenneth H. Keeling
District Judge
278th Judicial District

ADDENDUM 7

STANDARD BOND SCHEDULE

MADISON COUNTY, TEXAS

OFFENSE

All Capital Felonies	No Bond
First Degree Felony	$20,000
Prior Conviction	$30,000
More than One Prior	$50,000
Second Degree	$ 7,500
Prior Conviction	$15,000
More Than One Prior	$25,000
Third Degree	$ 3,500
Prior Conviction	$ 7,500
More Than One Prior	$15,000
Fourth Degree (State Jail)	$ 1,500
Prior Conviction	$ 3,000
More Than One Prior	$10,000
All Class A & B Misdemeanors.....(Madison County Residents)	$ 500
(Non-Residents)	$1,000
Motions To Adjudicate or Revoke	Discretionary

ADDENDUM 8

CAUSE NO._____

STATE OF TEXAS	§	**IN THE DISTRICT COURT**
VS.	§	**12th/278thJUDICIAL DISTRICT**
_____	§	**MADISON COUNTY, TEXAS**

AFFIDAVIT TO RELEASE SURETY

To the Honorable Judge of Said Court:

Comes now, _____ and respectfully shows to the Court that he/she is the surety on the appearance bond of the defendant in the above entitled and numbered cause, wherein the said defendant has been charged with the offense of _____, a felony and has been released on a bond in the sum of $_____, and your applicant would show the Court that the defendant is within the State of Texas and within the jurisdiction of this Court and that your applicant desires to surrender the said defendant to the Court and to be relieved upon the appearance bond herein.

Your applicant would further show that said bond was made on the ____ day of _____, 20____, and the defendant has paid a fee of $_____, and the reason for the surrender of the defendant is because:

_____

_____

_____

Wherefore applicant prays the Court to direct the Clerk of this Court to prepare a warrant of arrest directing the Sheriff of Madison County, Texas or any other proper officer of this State to re-arrest said defendant and that upon such re-arrest the applicant herein be relieved of all further obligations and responsibility as surety upon said appearance bond.

_____

Surety

Sworn to and subscribed before me this ____ day of _____,20___.

_____

Notary Public In and For the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Affidavit To Release Surety has been personally served upon the defendant's attorney of record _____ on this ___ day of _____, 20____.

(or)

I hereby certify that a true and correct copy of the foregoing Affidavit To Release Surety was mailed, by Certified Mail, Return Receipt Requested, to the defendant's attorney of record, _____, at _____ _____ on this _____day of _____, 20____.

(or)

After due inquiry, I certify that the said defendant is not represented by an attorney.

_____
Surety

Copy To: District Attorney

ORDER

On this _____day of _____, 20____, came on to be heard the application of _____, surety on the bond of the defendant herein, and the Court being of the opinion that such application should be granted, it is therefore Ordered, Adjudged, and Decreed by the Court that the Clerk be, and is hereby directed to prepare a warrant of arrest to be signed by the judge of this court for the re-arrest of the defendant, and further that _____, surety upon the bond of the defendant, be, and is hereby relieved of all further responsibilities and obligations as surety upon said bond of the defendant herein of and from such time as the defendant shall be re-arrested under the warrant herein ordered, and after the payment by said surety of all necessary and reasonable expenses incurred in re-arresting said defendant.

_____
Judge Presiding

ADDENDUM 9

CAUSE NO. _____

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT OF**
	§	
VS.	§	**MADISON COUNTY, TEXAS**
	§	
	§	**12TH / 278TH JUDICIAL DISTRICT**

STANDING DISCOVERY ORDER IN CRIMINAL CASES

This Court hereby adopts the following Standing Discovery Order that shall apply in all criminal cases in this Court until specifically ordered otherwise:

State is Ordered to Furnish:

1. Written list of all anticipated trial witnesses, including experts, and their addresses, to be supplemented as others are discovered.
2. All written or recorded statements of the defendant, along with all confessions or statements whether verbal or otherwise, made pursuant to Art. 38.22 C.C.P.
3. Written notice of intent to use extraneous offense evidence at trial. (Rule 404(b) Texas Rules of Evidence).
4. Inspection of:
   - **a.** All items seized from the defendant;
   - **b.** All items seized from any co-defendant or accomplice;
   - **c.** All physical objects to be introduced as part of the State's case;
   - **d.** All documents and photographs and investigative charts or diagrams to be introduced at trial;
   - **e.** All contraband, weapons, implements of criminal activity seized or acquired by the State or its agents in the investigation of the alleged offense;
   - **f.** All records of conviction which may be admissible in evidence or used for impeachment of the defendant; and

g. All tangible items of physical evidence collected by the State or its agents concerning the alleged offense; to include latent fingerprints, footprints, hairs, fibers, fingernail scrapings, body fluids, tire tracts, paint scrapings, etc.

5. All promises of benefit or lenience afforded to any accomplice or prospective witness in connection with his proposed testimony or other cooperation with regard to the alleged offense.

6. All known convictions which are admissible for impeachment concerning any of the State's proposed witnesses.

7. All known convictions, pending charges or suspected criminal offenses concerning any accomplice proposed to be used as a witness by the State.

8. Copies of all complaints, search warrants (related affidavits), autopsy reports and laboratory reports of all examinations of contraband, fluids, hairs, fingerprints, blood samples, ballistics, soil, fibers and paints.

9. Inspection and copy of all business records or governmental records expected to be introduced by the State.

10. All exculpatory evidence pursuant to ***Brady v. Maryland*** and related cases.

11. It is to be understood that the State will furnish all of such above items which are in the possession of the State's attorneys or which are known to be in the possession of the investigating officers or other agents of the State.

12. In appropriate cases, the State is encouraged to furnish offense reports and witness statements in addition to the above items. However, such reports and statements are normally work product of the State and are therefore protected from mandatory disclosure unless the contents are exculpatory. Such statements and reports must of course be tendered to the Defense for cross-examination on proper request under ***Gaskin*** or related requirements.

13. In the event that photographs, diagrams or models are prepared as "jury aids" at the direction of the State's attorneys before trial, such items will be considered work product unless the Defense demonstrates a "particularized need" for inspection thereof.

14. This order will dispose of any and all pretrial discovery motions heretofore filed. Because of the extensive nature of the discovery herein ordered, it will be considered that such Order is acceptable to the Defense pending the review of evidence and documents as ordered. In the event that further particularized discovery is considered necessary, the Defense will thereafter file a written Motion for Discovery, addressing only matters not covered in this Order, and such Motion will be presented to the Court at the earliest practical opportunity before trial.

15. The State is ordered to furnish the above inspection and copying on or before the date required by the Criminal Docket Scheduling Order or other order entered in each respective case. If the State discovers or learns of any new additional matter after the

Pre-Trial Hearing that are subject to disclosure under this Order, the State shall advise the Defense and furnish same for inspection and copying as soon as practicable. It is understood that the Defense should exercise reasonable diligence to contact the State's attorney and arrange a mutually convenient time for the appointment.

16. If a written request is made by the Defense, the State is ordered to prepare a list of exhibited or furnished items to be filed among the papers of this cause on or before the start of trial.

ORDERED and **ENTERED** on **date of arraignment,** and the **State** is **ORDERED** to comply herewith by **date stated in scheduling order or 30 days from date of arraignment whichever is first.**

Judge, 12TH Judicial District

Judge, 278TH Judicial District

ADDENDUM 10

STANDING ORDER IN LIMINE FOR TRIAL OF CRIMINAL JURY CASES

During the trial of any criminal jury case in the District Court, unless and except to the extent that the operation of this order shall have been suspended with reference to such specific trial, no attorney shall make mention, refer to or suggest any of the matters hereinafter set forth in the presence or hearing of the jury, the venire, or of any member of either without first approaching the bench and securing a ruling from the Court authorizing such reference. In addition, each attorney shall admonish the client, client's representatives and all non-adverse witnesses the attorney may call to testify similarly to refrain from any such statement, reference or suggestion unless same is essential to respond truthfully to a question asked by opposing counsel.

WARNING: Violations of this order may result in contempt of court proceedings or referral to the State Bar for grievance proceedings, as the court deems proper.

The matters to which reference is prohibited by this order are as follows:

1. The facts of the case during voir dire. (May talk about allegations in indictment).

2. The fact that the defendant has or has not applied for probation.

3. The range of punishment, if the judge is to assess punishment.

4. Do not ask commitment questions on voir dire.

5. Do not argue your case during voir dire or opening statement.

6. The state shall not make any reference to the defendants right to silence at any stage of the trial.

7. The **enhancement portions of an indictment** shall not be mentioned or referred to during voir dire or opening statements and that portion of the indictment shall not be read to the jury during the guilt stage of the trial.

8. **Ex Parte Statements of Witnesses.** Any reference to any ex parte statement of any witness or alleged witness unless and until such witness has been called to testify and has given testimony conflicting with such ex parte statement.

9. **Testimony of Absent Witness.** Any statement or suggestion as to the probable testimony of any witness or alleged witness who is unavailable to testify.

10. Hearsay Medical Opinions. Any hearsay statement offered for the truth of the statement by an allegedly injured person concerning any diagnosis or medical opinions communicated to such person by a physician or other health care provider.

11. Photographs and Visual Aids. Showing any documents, photographs or visual aids to the jury, or displaying same in such manner that the jury or any member thereof can see the same, unless and until the same has been tendered to opposing counsel, and has been admitted in evidence or approved for admission or use before the jury, by the Court.

12. Requests for Stipulations. Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.

13. Counsel's Opinion of Credibility. Any expression of counsel's personal opinion regarding the credibility of any witness.

14. Witnesses Comment On Credibility Of Another Witness. Any question that asks a witness to comment or testify that some other witness lied or is not credible except as provided in Rules 404 and 405,Texas Rules of Evidence.

15. Counsel's Opinion of Guilt or Innocence. Any expression of state or defense counsel's personal opinion as to the guilt or innocence of the defendant.

16. Evidence Not Produced in Discovery Response. Calling any witness, or offering any document in evidence, if the identity of such witness or the document has not been disclosed in response to the Standing Discovery Order or other court order. If a party has a good faith basis to urge that such witness or document should be received either because good cause existed for failure timely to disclose, such party shall first approach the bench and secure a ruling thereon. Counsel are advised that to the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial.

17. Objections to Evidence Not Produced In Discovery. Any objection based on failure to disclose evidence in pre-trial discovery. Any party desiring to urge any such objection shall request to approach the bench and urge such objection outside the hearing of the jury. To the extent possible or predictable, such matters should be addressed and a ruling sought at pretrial once the case is assigned for trial, although the objection may be urged for the record outside the hearing of the jury at the time such evidence is offered in the event the Court has overruled the objection at pretrial.

20. Polygraph Exams. No mention shall be made about the taking of, or offering to take, a polygraph exam.

21. Extraneous Offenses. Prior approval of the court is required before any mention is made of any extraneous offenses whether adjudicated or not, unless the prior adjudicated offense is an element of the primary offense that is on trial.

22. **Objections.** Do not argue your objections unless argument is invited by the court.

23. **Retention of Attorney.** The time or circumstances under which the defendant retained or was appointed an attorney.

W.L. McAdams
District Judge
12th Judicial District

Kenneth H. Keeling
District Judge
278th Judicial District

ADDENDUM 11

THE SUPREME COURT OF TEXAS

AND

THE COURT OF CRIMINAL APPEALS

THE TEXAS LAWYER'S CREED--A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

l. I am passionately proud of my profession. Therefore, "My word is my bond."

2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

l. I will advise my client of the contents of this creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon

or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery that is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

l. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct that offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Tab CC

NAVARRO COUNTY

MELISSA BUTLER
COURT COORDINATOR
(903) 654-3020

LESLIE KIRK
OFFICIAL REPORTER
(903) 654-3022

JAMES LAGOMARSINO
JUDGE, 13TH JUDICIAL DISTRICT COURT
NAVARRO COUNTY COURTHOUSE
P.O. BOX 333
CORSICANA, TEXAS 75151-0333

13th District Court Standing Order Regarding Defense Counsel Access To Defendant Jail Files

The Court finds that said jail files of criminal defendants housed in the Navarro County Jail contain necessary and vital information for court-appointed or hired Defense Counsel to review. The documents included in these findings include the jail book-in sheet, probable cause affidavits, and complaints. Not included in these findings are medical records and TCIC/NCIC (criminal history) records.

The Court orders that Navarro County Jail personnel allow inspection of the jail book-in sheet, probable cause affidavits, and complaints of the Defendant by his/her court-appointed or hired Defense Counsel. This inspection must be done in the presence of jail personnel at the book-in desk or another place designated by jail personnel.

Signed this the 21st day of September 2010.

James Lagomarsino
District Judge

36th, 156th and 343rd DISTRICT COURTS STANDING ORDER REGARDING CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES

No party to this lawsuit has requested this order. Rather, this order is a standing order of the 36TH , 156TH, and 343rd District Courts that applies in every divorce suit and every suit affecting the parent-child relationship filed in the 36th, 156th or 343rd Judicial District Court, with the exception of modifications in suit affecting the parent-child relationship and actions brought by the Office of the Attorney General or Family Protective Services. The 36th, 156th and 343rd District Courts have adopted this order because the parties and their children should be protected and their property preserved while the lawsuit is pending before the Court.

Therefore, it is **ORDERED:**

1. NO DISRUPTION OF CHILDREN.

Both parties are **ORDERED** to refrain from doing the following acts concerning any children who are subjects of this case:

1.1 Removing the children from the State of Texas, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.

1.2 Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled, without the written agreement of both parents or an order of this Court.

1.3 Hiding or secreting the children from the other parent or changing the children's current place of abode, without the written agreement of both parents or an order of this Court.

1.4 Disturbing the peace of the children.

2. CONDUCT OF THE PARTIES DURING THE CASE.

Both parties are **ORDERED** to refrain from doing the following acts:

2.1 Using vulgar, profane, obscene, or indecent language, or a coarse or offensive manner, to communicate with the other party, whether in person, by telephone, or in writing.

2.2 Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.

2.3 Placing one or more telephone calls, at an unreasonable hour, in an offensive or repetitious manner, without a legitimate purpose of communication, or anonymously.

2.4 Opening or diverting mail addressed to the other party.

3. PRESERVATION OF PROPERTY AND USE OF FUNDS

If this is a divorce case, both parties to the marriage are **ORDERED** to refrain from doing the following:

3.1 Destroying, removing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

3.2 Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.

3.3 Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.

3.4 Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.

3.5 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personal property or real estate property, and whether separate or community, except as specifically authorized by this order.

3.6 Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by this order.

3.7 Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.

3.8 Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

3.9 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by this order.

3.10 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

3.11 Taking any action to terminate or limit credit or charge cards in the name of the other party.

3.12 Entering, operating, or exercising control over the motor vehicle in the possession of the other party.

3.13 Discontinuing or reducing the withholding for federal income taxes on *wages* or salary while this suit is pending

3.14 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance at the other party's residence or in any manner attempting to withdraw any deposits for service in connection with such services.

4. **PERSONAL AND BUSINESS RECORDS .**

If this is a divorce case, both parties to the marriage are **ORDERED** to refrain from doing the following acts:

4.1 Concealing or destroying any family records, property records, financial records, business records or any records of income, debts, or other obligations.

4.2 Falsifying any writing or record relating to the property of either party.

4.3 "Records" include e-mail or other digital or electronic data, whether stored on a computer hard drive, diskette or other electronic storage device.

5. **INSURANCE.**

If this is a divorce case, both parties to the marriage are **ORDERED** to refrain from doing the following acts:

5.1 Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of either party, except as specifically authorized by this order.

5.2 Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or the parties' children.

5.3 Canceling, altering, or in any manner affecting any casualty' automobile, or health insurance policies insuring the parties' property of persons including the parties' minor children.

6. **SPECIFIC AUTHORIZATIONS.**

If this is a divorce case, both parties to the marriage are specifically authorized to do the following:

6.1 To engage in acts reasonable and necessary to the conduct of that party's usual business and occupation.

6.2 To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

6.3 To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation and medical care.

6.4 To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

7. **SERVICE AND APPLICATION OF THIS ORDER.**

7.1 The Petitioner shall attach a copy of this order to the original petition and to each copy of the petition. At the time the petition is filed, if the Petitioner has failed to attach a copy of this order to the petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented.

7.2 If the Petitioner is represented by an attorney, the attorney for Petitioner shall deliver a copy of this order to the Petitioner and advise the client of its meaning and effect.

7.3 This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of the Court. This entire order will terminate and will no longer be effective once the Court signs a final order.

8. **EFFECT OF OTHER COURT ORDERS.**

If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail. Any part of this order not changed by some later order remains in full force and effect until the Court signs a final decree.

9. **PARTIES ENCOURAGED TO MEDIATE**

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

THIS STANDING ORDER OF THE 36TH, 156TH AND 343RD JUDICIAL DISTRICT COURTS REGARDING CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES SHALL BECOME EFFECTIVE ON JULY 15, 2008.

Judge Starr B. Bauer
36th District Court

Judge Patrick L. Flanigan
156th District Court

Judge Janna K. Whatley
343rd District Court

NO._____

_____	)	**IN THE DISTRICT COURT**
_____	)	
_____	)	**____JUDICIAL DISTRICT**
_____	)	
_____	)	**BEXAR COUNTY, TEXAS**

STANDING ORDER REGARDING CHILD(REN), PROPERTY AND CONDUCT OF PARTIES IN DIVORCE AND SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

I. INTRODUCTION

No party to this lawsuit has requested this order. Rather, this order is a standing order of the Bexar County Civil District Courts that applies in every divorce suit and every suit affecting the parent-child relationship filed in Bexar County. The Civil District Courts of Bexar County have adopted this order because the parties and their child(ren) should be protected and their property preserved while the lawsuit is pending before the Court.

II. NO DISRUPTION OF CHILD(REN)

Both parties are ORDERED to refrain from doing the following acts concerning any child(ren) who are subjects of this case:

2.1 Removing the child(ren) from the State of Texas, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.

2.2 Disrupting or withdrawing the child(ren) from the school or day-care facility where the child(ren) are presently enrolled, without the written agreement of both parents or an order of this Court.

2.3 Hiding or secreting the child(ren) from the other parent or changing the child(ren)'s current residence, without the written agreement of both parents or an order of this Court.

2.4 Disturbing the peace of the child(ren).

2.5 Making disparaging remarks about each other or the other person's family members, to include but not be limited to the child(ren)'s grandparents, aunts, uncles, or stepparents.

2.6 Discussing with the child(ren), or with any other person in the presence of the child(ren), any litigation related to the child(ren) or the other party.

2.7 Consuming any illegal Controlled Substance (as that term is defined in the Texas Controlled Substance Act), 12 hours prior to and during possession of the child(ren).

2.8 If this is an original divorce action, allowing anyone with whom the party is romantically involved, to remain over night in the home while in possession of the child(ren). Overnight is defined from 10:00 p.m. that evening until 7:00 a.m. the next morning.

III. CONDUCT OF THE PARTIES DURING THE CASE

Both parties, their agents, servants, and/or employees, are ORDERED to refrain from doing the following acts:

3.1 Intentionally communicating in person or in any other manner, including by telephone, or another electronic voice transmission, video chat, in writing, or electronic messaging with the other party by use of vulgar, profane, obscene, or indecent language, or a coarse or offensive manner, to communicate with the other party.

3.2 Threatening the other party in person or in any other manner, including by telephone, or in another electronic voice transmission, video chat, in writing or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party.

3.3 Placing a telephone call, anonymously, at an unreasonable hour, in an offensive or repetitious manner, without a legitimate purpose of communication with the intent to annoy or alarm the other party.

3.4 Intentionally, knowingly, or recklessly causing bodily injury to the other party or to a child of either party.

3.5 Threatening the other party or a child of either party with imminent bodily injury.

3.6 Opening or diverting mail or email or any other electronic communication addressed to the other party.

IV. PRESERVATION OF PROPERTY AND USE OF FUNDS DURING DIVORCE CASE

If this is a divorce case, both parties to the marriage, their agents, servants, and/or employees, are ORDERED to refrain from doing the following:

4.1 Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party.

4.2 Misrepresenting or refusing to disclose to the other party or the Court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information.

4.3 Damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information.

4.4 Tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party.

4.5 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is personal property, real property, or intellectual property and whether separate or community, except as specifically authorized by this order.

4.6 Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by this order.

4.7 Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.

4.8 Spending any money in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

4.9 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account of either party, except as specifically authorized by this order.

4.10 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

4.11 Taking any action to terminate or limit credit or charge cards in the name of the other party.

4.12 Entering, operating, or exercising control over the motor vehicle in the possession of the other party.

4.13 Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary while this suit is pending.

4.14 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposits for service in connection with those services.

4.15 Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically store information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

4.16 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage,

regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

4.17 Deleting any data or content from any social network profile used or created by either party or a child of the parties.

4.18 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account.

4.19 Excluding the other party from the use and enjoyment of a specifically identified residence of the other party.

V. PERSONAL AND BUSINESS RECORDS IN DIVORCE CASE

If this is a divorce case, both parties to the marriage, their agents, servants, and/or employees, are ORDERED to refrain from doing the following acts:

5.1 Concealing or destroying any family records, property records, financial records, business records or any records of income, debts, or other obligations including electronic records.

5.2 Falsifying any writing or record, including an electronic record, relating to the property of either party.

> "Records" include e-mail or other digital or electronic data, whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

VI. INSURANCE IN DIVORCE CASE

If this is a divorce case, both parties to the marriage, their agents, servants, and/or employees, are ORDERED to refrain from doing the following acts:

6.1 Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of either party or a child of the parties, except as specifically authorized by this order.

6.2 Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or a child of the parties.

6.3 Canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties.

VII. SPECIFIC AUTHORIZATION IN DIVORCE CASE

If this is a divorce case, both parties to the marriage are specifically authorized to do the following:

7.1 To engage in acts reasonable and necessary to the conduct of that party's usual business and occupation.

7.2 To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

7.3 To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation and medical care.

7.4 To make withdrawal from accounts in financial institutions only for the purposes authorized by this order.

VIII. SERVICE AND APPLICATION OF THIS ORDER

8.1 The Petitioner shall attach a copy of this order to the original petition and to each copy of the petition. At the time the petition is filed, if the Petitioner has failed to attach a copy of this order to the petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented.

8.2 This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition and is renewed for subsequent periods of every fourteen days thereafter until a temporary injunction is ordered. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of the court. This entire order will terminate and will no longer be effective once the court signs a final order.

IX. EFFECT OF OTHER ORDERS

If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail. Any part of this order not changed by some later order remains in full force and effect until the court signs a final decree.

X. PARTIES ARE ENCOURAGED TO MEDIATE

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

XI. BOND WAIVED

It is ORDERED that the requirement of a bond is waived.

XII. FAMILY STABILIZATION

Parents of minor child(ren) are required to attend a family stabilization program (Helping Children Cope with Divorce) within 60 days of the filing of the Petition for Divorce or the Suit Affecting the Parent Child Relationship. Waivers may be granted only by order of the court. Proof of completion of the program must be provided to the court upon meeting this requirement.

SO ORDERED THIS 10th OF SEPTEMBER, 2015.

JUDGE MICHAEL MERY
37TH DISTRICT COURT

JUDGE CATHLEEN STRYKER
224TH DISTRICT COURT

JUDGE STEPHANI WALSH
45TH DISTRICT COURT

JUDGE PETER SAKAI
225TH DISTRICT COURT

JUDGE ANTONIA ARTEAGA
57TH DISTRICT COURT

JUDGE RICHARD PRICE
285TH DISTRICT COURT

JUDGE DAVID CANALES
73RD DISTRICT COURT

JUDGE SOL CASSEB
288TH DISTRICT COURT

JUDGE JOHN GABRIEL
131ST DISTRICT COURT

JUDGE KAREN POZZA
407TH DISTRICT COURT

JUDGE RENEE YANTA
150TH DISTRICT COURT

JUDGE LARRY NOLL
408TH DISTRICT COURT

JUDGE LAURA SALINAS
166TH DISTRICT COURT

JUDGE GLORIA SALDANA
438TH DISTRICT COURT

STANDING ORDER REGARDING E-FILING FROM THE DISTRICT COURTS OF CAMERON COUNTY, TEXAS

In efforts to begin compliance with the Texas Supreme Court Mandate regarding e-filing, the District Courts of Cameron County are issuing the following order:

1. Beginning July 1, 2014, the District Courts of Cameron County will require all attorneys to e-file all documents relating to Family Law Cases and Civil Law Cases with the District Clerk of Cameron County. **NO PAPER FILINGS WILL BE ACCEPTED.**
2. All Parties shall provide a courtesy hard copy (Court Copy) to the Court of all motions, responses, and pertinent supporting documents no later than 5 working days after the document is e-filed and accepted. The Court Copy shall be addressed and mailed directly to the District Court.
3. All orders submitted to the District Courts for consideration and/or signature shall contain valid email addresses of all parties requiring notification at the bottom of each instrument. All counsel, whether retained or appointed, shall be responsible for ensuring their electronic post office boxes are adequate to handle all documents that will be sent electronically by making certain that:
    a. Their email service provider does not limit the size of attachments
    b. The Cameron County District Clerks' transmissions are not blocked.

FAILURE OF COUNSEL TO MAINTIAN THEIR PERSONAL CONTACT INFORMATION OR FAILURE OF COUNSEL TO ENSURE THEIR ELECTRONIC POST OFFICE BOXES ARE ADEQUATE TO HANDLE ALL DOCUMENTS EMAILED TO THEM BY THE CAMERON COUNTY DISTRICT CLERK SHALL NOT SERVE AS GOOD CAUES ON A COMPLAINT FOR LACK OF NOTICE.

Filing of documents for all Criminal Law Cases will continue as is currently in place.

SIGNED THIS THE 27 day of Aug., 2014.

Honorable Janet Leal
103rd District Court Judge

Honorable Benjamin Euresti, Jr.
107th District Court Judge

Honorable Arturo Cisneros Nelson
138th District Court Judge

Honorable Migdalia Lopez
197th District Court Judge

Honorable Oscar X. Garcia
357th District Court Judge

Honorable Elia Cornejo Lopez
404th District Court Judge

Honorable David Sanchez
444th District Court Judge

Honorable Rolando Olvera
445th District Court Judge

FILED 1:38 O'CLOCK P M
AURORA DE LA GARZA, CLERK

AUG 27 2014

DISTRICT COURT OF CAMERON COUNTY, TEXAS

DEPUTY

COLLIN COUNTY DISTRICT COURTS GENERAL ORDERS

COLLIN COUNTY STANDING ORDER REGARDING CHILDREN, PROPERTY, AND CONDUCT OF THE PARTIES

No party to this lawsuit has requested this order. Rather, this order is a standing order of the Collin County District Courts that applies in every divorce suit and every suit affecting the parent-child relationship filed in Collin County. The District Courts of Collin County have adopted this order because the parties and their children should be protected and their property preserved while the lawsuit is pending before the court. Therefore it is ORDERED:

1. NO DISRUPTION OF CHILDREN. Both parties are ORDERED to refrain from doing the following acts concerning any child who is the subject of this case:

- 1.1 Removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.
- 1.2 Disrupting or withdrawing a child from the school or day-care facility where the child is presently enrolled, without the written agreement of both parents or an order of this Court.
- 1.3 Hiding or secreting a child from the other parent or changing a child's current place of abode, without the written agreement of both parents or an order of this Court.
- 1.4 Disturbing the peace of a child.
- 1.5 Making disparaging remarks about each other or the other party's family members, to include but not be limited to the child's grandparents, aunts, uncles, or stepparents.
- 1.6 Discussing with a child, or with any other person in the presence of a child, any litigation related to a child or the other party.
- 1.7 If this is an original divorce action, allowing anyone with whom the party is romantically involved to remain overnight in the home while in possession of a child. Overnight is defined as from 10:00 p.m. until 7:00 a.m.

2. CONDUCT OF THE PARTIES DURING THE CASE. Both parties are ORDERED to refrain from doing the following acts:

- 2.1 Communicating in person or in any other manner, including by telephone, electronic voice transmission, video chat, writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
- 2.2 Threatening the other party in person or in any other manner, including by telephone, electronic voice transmission, video chat, writing, or electronic messaging, to take unlawful action against any person.
- 2.3 Placing one or more telephone calls, anonymously, at an unreasonable hour, in an offensive or repetitious manner, or without a legitimate purpose of communication.
- 2.4 Opening or diverting mail, e-mail, or any other electronic communication addressed to the other party.
- 2.5 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account.
- 2.6 Illegally intercepting or recording the other party's electronic communications.

3. PRESERVATION OF PROPERTY AND USE OF FUNDS DURING DIVORCE CASE. These orders apply to electronic records and electronically stored information, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

3.1 Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

3.2 Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any tangible or intellectual property of one or both of the parties.

3.3 Damaging or destroying the tangible or intellectual property of one or both of the parties, including any document that represents or embodies anything of value.

3.4 Tampering with the tangible or intellectual property of one or both parties, including any document that represents or embodies anything of value, and causing pecuniary loss or substantial inconvenience to the other party.

3.5 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any property of either party, whether personal property, real estate property, or intellectual property, and whether separate property or community property, except as specifically authorized by this order.

3.6 Incurring any debt, other than legal expenses in connection with this suit, except as specifically authorized by this order.

3.7 Withdrawing money from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.

3.8 Spending any money in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

3.9 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account, of either party, except as specifically authorized by this order.

3.10 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

3.11 Taking any action to terminate or limit credit or charge cards in the name of the other party.

3.12 Entering, operating, or exercising control over a motor vehicle in the possession of the other party.

3.13 Discontinuing or altering the withholding for federal income taxes from either party's wages or salary.

3.14 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, such as security, pest control, landscaping, or yard maintenance at the other party's residence, or in any manner attempting to withdraw any deposit paid in connection with such services.

4. PERSONAL AND BUSINESS RECORDS IN DIVORCE CASE. These orders apply to electronic records and electronically stored information, regardless of whether the information is stored

on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

4.1 Concealing or destroying any family records, property records, business records, or any records of income, debts, or other obligations.

4.2 Falsifying any writing or record relating to the property of either party.

4.3 Destroying, disposing of, or altering any financial record of either party, including a canceled check, a deposit slip, any other record from a financial institution, a record of credit purchases or cash advances, a tax return, or a financial statement.

4.4 Destroying, disposing of, or altering any e-mail, text message, video message, chat message, or other electronic information relevant to the suit.

4.5 Modifying, changing, or altering the native format or metadata of any electronic information relevant to the suit.

4.6 Deleting any data or content from any social network profile used or created by either party or a child of the parties.

5. INSURANCE IN DIVORCE CASE. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

5.1 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties, except as specifically authorized by this order.

5.2 Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties.

5.3 Canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed, of any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties.

6. SPECIFIC AUTHORIZATIONS IN DIVORCE CASE. If this is a divorce case, both parties to the marriage are specifically authorized to do the following:

6.1 To engage in acts reasonable and necessary to conduct that party's usual business and occupation.

6.2 To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

6.3 To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

7. SERVICE AND APPLICATION OF THIS ORDER.

7.1 The Petitioner shall attach a copy of this order to the original petition and to each copy of the petition. At the time the petition is filed, if the Petitioner has failed to attach a copy of this order to the petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented.

7.2 This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall

continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

8. EFFECT OF OTHER COURT ORDERS. If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail. Any part of this order not changed by some later order remains in full force and effect until the court signs a final order.

9. PARTIES ENCOURAGED TO MEDIATE. The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

THIS COLLIN COUNTY STANDING ORDER REGARDING CHILDREN, PROPERTY, AND CONDUCT OF THE PARTIES SHALL BECOME EFFECTIVE ON JANUARY 1, 2017.

JUDGE ANGELA TUCKER
199th Judicial District Court

JUDGE SCOTT J. BECKER
219th Judicial District Court

JUDGE JOHN ROACH, JR.
296th Judicial District Court

JUDGE RAY WHELESS
366th Judicial District Court

JUDGE BENJAMIN SMITH
380th Judicial District Court

JUDGE MARK RUSCH
401st Judicial District Court

JUDGE ANDREA THOMPSON
416th Judicial District Court

JUDGE CYNTHIA WHELESS
417th Judicial District Court

JUDGE JILL WILLIS
429th Judicial District Court

JUDGE PIPER McCRAW
469th Judicial District Court

JUDGE EMILY MISKEL
470th Judicial District Court

F2015/42

DALLAS COUNTY FAMILY DISTRICT COURT
GENERAL ORDERS
(Revised November 4, 2015)

DALLAS COUNTY STANDING ORDER REGARDING CHILDREN, PETS, PROPERTY AND CONDUCT OF THE PARTIES

No party to this lawsuit has requested this order. Rather, this order is a standing order of the Dallas County District Courts that applies in every divorce suit and every suit affecting the parent-child relationship filed in Dallas County. The District Courts of Dallas County giving preference to family law matters have adopted this order because the parties, their children and the family pets should be protected and their property preserved while the lawsuit is pending before the court. Therefore, it is **ORDERED:**

1. **NO DISRUPTION OF CHILDREN.** All parties are ORDERED to refrain from doing the following acts concerning any children who are subjects of this case:

1.1 Removing the children from the State of Texas for the purpose of changing residence, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.

1.2 Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled, without the written agreement of both parents or an order of this Court.

1.3 Hiding or secreting the children from the other parent or changing the children's current place of abode, without the written agreement of both parents or an order of this Court.

1.4 Disturbing the peace of the children.

1.5 Making disparaging remarks regarding the other party in the presence or within the hearing of the children.

2. **PROTECTION OF FAMILY PETS OR COMPANION ANIMALS.** All parties are ORDERED to refrain from harming, threatening, interfering with the care, custody, or control of a pet or companion animal, possessed by a person protected by this order or by a member of the family or household of a person protected by this order.

3. **CONDUCT OF THE PARTIES DURING THE CASE.** All parties are ORDERED to refrain from doing the following acts:

3.1 Using vulgar, profane, obscene, or indecent language, or a coarse or offensive manner to communicate with the other party, whether in person or in any other manner, including by telephone or another electronic voice transmission, video chat, social media, ~~or~~ in writing, or electronic messaging, with intent to annoy or alarm the other party.

3.2 Threatening the other party in person or in any other manner, including, by telephone or another electronic voice transmission, video chat, social media, ~~or~~ in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party.

3.3 Placing one or more telephone calls or text messages, at an unreasonable hour, in an

offensive or repetitious manner, without a legitimate purpose of communication, or anonymously with the intent to alarm or annoy the other party.

3.4 Intentionally, knowing or recklessly causing bodily injury to the other party or to a child of either party.

3.5 Threatening the other party or a child of either party with imminent bodily injury.

4. **PRESERVATION OF PROPERTY AND USE OF FUNDS DURING DIVORCE CASE.**

If this is a divorce case, both parties to the marriage are ORDERED to refrain from intentionally and knowingly doing the following acts:

4.1 Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

4.2 Falsifying a writing or record including an electronic record, relating to the property of either party.

4.3 Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any tangible or intellectual property of one or both of the parties, including electronically stored or recorded information.

4.4 Damaging or destroying the tangible or intellectual property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party, including electronically stored or recorded information.

4.5 Tampering with the tangible or intellectual property of one or both of the parties, including any document, electronically stored or recorded information, that represents or embodies anything of value, and causing pecuniary loss to the other party.

4.6 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personal property or real property or intellectual property, and whether separate or community, except as specifically authorized by this order.

4.7 Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by this order.

4.8 Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.

4.9 Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.

4.10 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by this order.

4.11 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.

4.12 Destroying, disposing of, or altering, any financial records of the parties, including canceled checks, deposit slips, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement.

4.13 Destroying, disposing of, or altering any email, text message, video message, or chat message or social media message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive in a removable storage device, in cloud storage, or in another electronic storage medium.

4.14 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive in a removable storage device, in cloud storage, or in another electronic storage medium.
4.15 Deleting any data or content from any social network profile used or created by either party or a child of the parties.
4.16 Using any password or personal identification number to gain access to the other party's email account, bank account, social media account, or any other electronic account.
4.17 Taking any action to terminate or limit credit or charge cards in the name of the other party.
4.18 Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
4.19 Discontinuing or reducing the withholding for federal income taxes on wages or salary.
4.20 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance at the other party's residence or in any manner attempting to withdraw any deposits for service in connection with such services.
4.21 Excluding the other party from the use and enjoyment of the other party's specifically identified residence.
4.22 Opening or redirecting mail, email or any other electronic communication addressed to the other party.

5. **PERSONAL AND BUSINESS RECORDS IN DIVORCE CASE.** "Records" means any tangible document or recording and includes e-mail or other digital or electronic data, whether stored on a computer hard drive, diskette or other electronic storage device. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts: Concealing or destroying any family records, property records, financial records, business records or any records of income, debts, or other obligations; falsifying any writing or record relating to the property of either party.

INSURANCE IN DIVORCE CASE. If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts: Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of either party, except as specifically authorized by this order. Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or the parties' children. Canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' minor children.

SPECIFIC AUTHORIZATIONS IN DIVORCE CASE. If this is a divorce case, both parties to the marriage are specifically authorized to do the following: To engage in acts reasonable and necessary to the conduct of that party's usual business and occupation; To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit; To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation and medical care; To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

SERVICE AND APPLICATION OF THIS ORDER. The Petitioner shall attach a copy of this order to the original petition and to each copy of the petition. At the time the petition is filed, if the

Petitioner has failed to attach a copy of this order to the petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented. This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of the court. This entire order will terminate and will no longer be effective once the court signs a final order.

EFFECT OF OTHER COURT ORDERS. **If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail.** Any part of this order not changed by some later order remains in full force and effect until the court signs a final decree.

PARTIES ENCOURAGED TO MEDIATE. The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation or informal settlement conferences (if appropriate), to resolve the conflicts that may arise in this lawsuit.

BOND WAIVED. It is **ORDERED** that the requirement of a bond is waived.

THIS DALLAS COUNTY STANDING ORDER REGARDING CHILDREN, PROPERTY AND CONDUCT OF PARTIES SHALL BECOME EFFECTIVE ON SEPTEMBER 1, 2015.

Hon. Susan Rankin
Judge, 254th District Court

Hon. Mary Brown
Judge, 301st District Court

Hon. Kim Cooks
Judge, 255th District Court

Hon. Tena Callahan
Judge, 302nd District Court

Hon. David Lopez
Judge, [illegible] District Court

11-4-15
Hon. Dennise Garcia
Judge, 303rd District Court

Hon. Andrea Plumlee
Judge, 330th District Court

Standing Orders

228th Criminal District Court
Harris County, Texas

The following Standing Orders are in effect as of September 5, 2007. Attorneys practicing in the 228th shall comply with these Orders.

Standing Order No.1 Court Settings:

The Defendant is required to appear at all court settings. Each case will be set for arraignment, non-issue, and motions (28.01). After the motion setting if a case is not resolved it will be set for either a trial or plea.

Arraignment Setting: Cases will be set for arraignment 30 days from initial appearance. In the case of a person in custody for a State jail felony drug case that has not been indicted in 30 days, the case will be set for an examining trial.

Non-issue Setting: Cases will receive a 30-day non-issue setting after indictment. The purpose of the non-issue setting is to review the file, investigate the case and negotiate with the State. Parties should sign the Court's agreed discovery order at the non-issue setting.

Motions/ 28.01 hearing: Cases will be given a 30-day motion setting. This setting will satisfy Article 28.01 Code of Criminal Procedure, which requires parties to present all pre-trial motions to the Court 10 days prior to the 28.01 date.

a. Motions must be filed 10 days prior to motion date.
b. Parties must confer on motions prior to filing.
c. In the Court's "Agreed Discovery Motion" the parties must agree on a compliance date, otherwise it is deemed waived.

Standing Order No.2 Motions to Revoke/Motions to Adjudicate:

Motions to Revoke Probation and Motions to Adjudicate Guilt will proceed to a hearing 10 days after the initial appearance.

Parties are encouraged to negotiate with the State prior to a hearing. The State and the Defense may approach the bench to discuss relevant factors concerning a probationer in an effort to resolve the case without a formal hearing.

Standing Order No.3 Order of Trial and Continuances:

The State and the Defense will make a formal announcement of "Ready" or "Not Ready" on trial day. Motions for continuance will be considered after announcements. The Court will use its discretion in ruling on motions for continuance.

The Court, in its discretion, will call cases to trial on the docket. All cases not called will be carried on the trial docket. Lawyers (State and Defense) will be on 24-hour call.

On Call Procedures: Cases not called for trial on the day set will be on 24-hour call. The Attorneys will give the court coordinator several contact numbers to ensure the court is able to reach them the day before the trial will commence. After receiving notice of the trial date, the attorney and defendant must appear in court at 9:00 a.m. on that day. The parties are responsible for notifying their witnesses of the trial date.

Witness availability: When a case is set for trial, the witnesses must be available that day in the event the schedule permits testimony to start on the day the case is called to trial. If the case is not called to trial, the witnesses will be on standby until the case is called to trial. It is the duty of the attorneys to inform witnesses what day and time they must appear in court for trial. (see: on call procedures above.)

Standing Order No.4 Defendant's Attire at Trial (Jail Cases):

The defendant's lawyer is responsible for ensuring that the defendant has clothes for trial. They must inform the defendant's family of the Harris County jail procedures for providing clothes to defendants in custody. Lawyers should make this a part of their standard practice in representing defendants in custody in the 228th. Therefore, attorneys must become familiar with the Harris County jail procedures in this regard.

It is the opinion of this Court that trials are set far enough in advance for Attorneys to coordinate this matter before trial day. Motions for continuance will not be granted for an attorney's failure to ensure that his client "dressed out" for trial. It may result in an unreasonable delay of court proceedings.

Standing Order No.5 Sexual Harassment:

The Court will not tolerate sexual harassment. Attorneys and staff will conduct themselves in a professional manner and treat each other with respect.

Court Staff and Harris County employees should refer to the Harris County Policy Manual and Procedures for reporting sexual harassment. All others should report these matters to the Court.

Standing Order No.6 Motions to Suppress:

Generally, all motions to suppress will be carried with trial. Motions to suppress will be heard prior to trial when they are dispositive, meaning the State agrees to dismiss the case if the motion is sustained and the Defense agrees to plead guilty with a right to appeal if the motion is denied.

Generally, the Court will not decide issues of fact or credibility by affidavit. The parties may stipulate to facts when the issue is a matter of law.

Standing Order No.7 Docket Call and Announcements for Trial:

Effective January 1, 2005, the 228th Criminal District Court will require all Defendants on bond to appear in court at 8:30 a.m. for docket call. At least one attorney from the District Attorney's Office must be present for docket call.

Attorneys that have cases on the trial docket must appear in court by **9:00 a.m.** to make a formal announcement of either Ready or Not Ready when the **trial docket** is called. Parties that are not ready and want a continuance must present a formal motion for continuance at that time.

HAND WRITTEN MOTIONS WILL NOT BE ACCEPTED.

Standing Order No. 8 Trial Settings withdraw and Substitution

Once a case is set for trial a lawyer will not be permitted to withdraw. Any decision to withdraw must be done BEFORE the case is set for trial. Lawyers that substitute in on a case that is set for trial WILL NOT be granted a continuance on the basis that they need additional time to prepare. If you sign on for a **trial,** be prepared to try the case on the date set.

Signed this the 5th day of September, 2007.

_____

Marc Carter, Judge Presiding

Tab DD

Memorandum

To: Texas Supreme Court Advisory Committee

From: Subcommittee on Tex. R. Civ. P. 1-14c
Hon. Jane Bland, Chair
Pamela Stanton Baron, Past Chair and Vice Chair
Hon. Robert H. Pemberton
Evan Young
Chris Nickelson

Date: June 28, 2018

Re: Limited Scope Representation rules

I. Matters referred to subcommittee

Texas Disciplinary Rule of Professional Conduct 1.02(b) specifically permits a lawyer to limit the scope, objectives, and general methods of representation if the client consents after consultation. While limited-scope representation is authorized, existing state-wide procedural rules are not tailored for it. In its referral letter of July 5, 2017, the Texas Supreme Court has asked the subcommittee to draft procedural rules that are more tailored to limited-scope representation as follows:

> **Procedural Rules on Limited-Scope Representation.** In its December 6, 2016 report, the Texas Commission to Expand Civil Legal Services recommends that the Court adopt procedural rules to address issues raised by limited-scope representation. The Court requests the Committee to draft rules for the Court's consideration. The Committee should solicit input from the family-law bar in doing so. The Commission's report is available through the Court's website.

Referral Letter (Tab A) at 2. The Texas Commission to Expand Civil Legal Services concluded that:

> The Texas Commission recommends that the Court (1) solicit input from the bar on the use of limited-scope representation to provide some affordable legal assistance to modest-means clients who otherwise would proceed unrepresented,

> and (2) commission a review of Texas court rules to determine whether amendments should be made to promote the use of limited-scope representation in Texas.

Commission Report at 17 (excerpted at Tab B).

II. Resources

In carrying out the tasks in the referral letter, the subcommittee has had the benefit of a wealth of resources:

> Report of the Texas Commission to Expand Civil Legal Services, Dec. 6, 2016 (excerpted at Tab B).
>
> Report of the Limited Scope Representation C0mmittee to the Texas Commission to Expand Civil Legal Services, Sept. 29, 2016 (Tab C). The LSR Committee members were: Kennon L. Wooten, Chair; Hon. Jane Bland; Hon. Ann Crawford McClure; F. Scott McCown; Chris Nickelson; and Hon. Lee H. Rosenthal. That report provided an invaluable analysis of the issues to be addressed in drafting rules to better accommodate limited scope representation and considerable research on the issues.
>
> Appendices to the Report of the Limited Scope Representation Subcommittee, Sept. 29, 2016 (Tab C). Extensive materials were attached to the Report that were of great assistance to the SCAC subcommittee:
>
> - App. 1: Texas Supreme Court Order Creating the Texas Commission to Expand Civil Legal Services
> - App. 2: ABA Unbundling Fact Sheet
> - App. 3: Texas Access to Justice Commission, Limited Scope Representation Fact Sheet
> - App. 4: ABA Chart Summarizing Adoption of LSR Rules
> - App. 5: Texas Disciplinary Rule 1.02
> - App. 6: ABA Model Rule 1.2
> - App. 7: ABA Model Rule 6.5
> - App. 8: Travis County Local Rule 20
> - App. 9: Chart Summarizing Limited Scope Representation (LSR) Provisions on a State-by-State Basis
>
> Assistance from the Texas Access to Justice Commission. Trish McAllister and Kristen Levins at TAJC provided input and their substantial knowledge about limited scope representation as well as the tools kits that TAJC has developed for use in family law cases (Tab D) and for general civil law matters (Tab E).

Assistance from the Family Law Section of the State Bar of Texas. The Family Law Section has provided its full support to our subcommittee. Chris Nickelson, Vice-Chair of the Family Law Section, has served as a member of our subcommittee, provided great insight and resources, and has served as a liaison between our subcommittee and the Family Law Section. The Family Law Section provided input and full support for surveying its members on issues related to limited scope representation.

Assistance from Members Services at the State Bar of Texas. Tracy Nuckols at the State Bar worked with our subcommittee to send a survey on limited scope representation to family law practitioners in the State.

III. Subcommittee actions and analysis

The subcommittee met by conference call on September 26, 2017. The purpose was to have a preliminary conversation based on the materials in the Reports of the Texas Commission to Expand Civil Legal Services and its Limited Scope Representation Committee. The subcommittee further had the benefit that two of its members, Justice Jane Bland and Chris Nickelson, had served on the Limited Scope Representation Committee. It was a productive discussion on the issues raised in the reports. Chris Nickelson indicated that he had informed the Family Law Section's Executive Committee about our subcommittee's charge and that the Committee indicated its willingness to survey its members on issues delineated by our subcommittee. The subcommittee agreed that its next steps would be to create a list of issues that it would need to consider in proposing any rule adjustments to better accommodate limited scope representation and, following that, to draft a survey addressing those issues to be sent to family law practitioners. The subcommittee further decided that, if possible, it would be helpful to have two surveys – one to family law practitioners in Travis County because Travis County had in place a local rule providing procedures for limited scope representation and one to practitioners outside of Travis County. The subcommittee also discussed those portions of the Report of the Limited Scope Representation Committee that suggested possible changes to the disciplinary rules – including requiring informed consent of the client to agree to limited scope representation and waiving conflict rules for walk-in clinics. Given the complexities of obtaining a change to the disciplinary rules, our subcommittee decided to focus its efforts on identifying changes to the rules of procedure to better accommodate limited scope representation.

On September 27, 2017, then-chair of our subcommittee, Pamela Baron, reported on the subcommittee's discussions and next steps in a call with Trish McAllister and Kristen Levins at the Texas Access to Justice Commission. Both offered to assist the subcommittee. On October 11, 2017, as a follow up, Kristin Levins provided an updated report on LSR rules in all 50 states (Tab F).

The subcommittee drafted and revised an issues list (Tab G). The issues covered a range of topics, including disclosure/appearance, notice, service, and withdrawal.

Based on the issues list, Chris Nickelson drafted two proposed surveys – one for Travis County family law practitioners and one for those outside Travis County. The subcommittee revised the surveys. One of our objectives was to keep the survey narrow in scope to specific experiences or specific questions rather than inviting general comments about whether limited scope was a good idea or a bad idea. At a meeting of the Family Law Section's Executive Committee on December 9, 2017, Chris solicited input on the contents of the surveys and obtained permission to survey the section members. He then worked with Tracy Nuckols at the State Bar about coordinating the survey distribution. The subcommittee determined that release of the survey should not occur until after the holidays in the hope of increasing the response rate.

The survey period ran from February 9, 2018 until April 1, 2018. The survey was sent to 12,458 Texas family law attorneys (5,830 of whom were members of the Family Law Section). Excluded from the survey were practitioners who had opted out of participating in surveys and those who had not reported the Texas county they practiced in. The survey questions and responses are attached at Tab H.

The subcommittee met by conference call on May 10, 2018 to discuss the survey results. The subcommittee was disappointed with the overall response rate, which was 3.6% of those surveyed. The subcommittee agreed that the low response rate called into question how much the study should be relied on in formulating changes to the procedural rules. That given, the subcommittee concluded that the survey results did support the adoption of state-wide rules to clarify court procedures in a limited scope representation context. Nearly half the respondents outside of Travis County indicated that problems had arisen in a limited scope representation "because there are no procedural rules specifically governing limited scope representation." And almost 84% of respondents outside Travis County agreed that it would be helpful to have "procedural rules specifically addressing limited scope representation, including appearance, service, and withdrawal." The survey respondents favored limiting the trial court's ability to deny withdrawal after the tasks within the limited scope had been completed, favored disclosure of an attorney's involvement, and were split on the best method for accomplishing service.

The subcommittee's analysis of written comments identifying problems with limited scope representation found three areas of concern. The primary one was client-based, where the client did not understand the scope of the representation. The second was the additional burden placed on opposing counsel who often must engage in extra work because of a lack of knowledge of the scope of the representation to be provided by opposing counsel and problems with service and notice. And the third problem area related to the trial court's refusal to permit withdrawal, even when all services had been performed. The subcommittee concluded that the first area of concern could not be addressed in a procedural rule, but that practitioners need to

be educated in the best ways to draft a limited scope agreement to ensure a clear defining of the tasks to be performed and to make certain the client's understanding of the limited nature of the representation. The subcommittee concluded that the second area could be addressed in a procedural rule that permitted an attorney to enter a limited appearance that disclosed the tasks to be performed and that clearly provided the manner of service in such cases. The subcommittee also concluded that the third area, withdrawal, could be addressed in a procedural rule, although the disciplinary rules would still give the trial court some discretion to deny withdrawal in certain circumstances. Justice Jane Bland and Evan Young volunteered to draft proposed changes to the procedural rules; the subcommittee agreed that Travis County Local Rule 20 would serve as an excellent starting point.

The subcommittee met by conference call on June 18, 2018 to discuss the proposed changes to procedural rules to accommodate limited scope representation. Justice Jane Bland presented proposed draft rules. The subcommittee began by addressing several preliminary issues. The subcommittee determined that it would propose only changes to court procedural rules to accommodate limited scope representation. The subcommittee determined that the best placement for any proposed rule changes would be in Tex. R. Civ. P. 8 and 10 which currently govern attorney in charge and withdrawal; the subcommittee considered a separate limited scope rule but decided the better fit would be to amend Rules 8 and 10. The subcommittee also decided to address service within the proposed changes to make clear how service is accomplished in limited scope situations rather than relying on the general provisions in Rule 21a. Finally, the subcommittee determined that the parameters for appearance and withdrawal would be specific-issue based rather than on a hearing-by-hearing basis. After these preliminaries, the subcommittee made adjustments to the draft. Justice Bland agreed to circulate a revised version for the subcommittee's input via email.

The subcommittee proposes for discussion changes to Tex. R. Civ. P. 8 and 10 as set out in the following section. Prior to the July 13, 2018 SCAC meeting, the subcommittee will solicit input on the proposed rules from the Executive Committee of the Family Law Section and the Texas Access to Justice Commission. That input will be presented at the July 13, 2018 meeting.

IV. Subcommittee proposed rule changes

The subcommittee unanimously recommends the following rule changes to accommodate limited scope representation:

Proposed Amendments to Texas Rules of Civil Procedure 8 and 10
(Subcommittee Draft 7/28/18)

Rule 8. Attorney in Charge

Rule 8.1. General Appearance [Current text of Rule 8]

On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party shall be the attorney in charge, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as to such party.

All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.

Rule 8.2. Limited Appearance

(a) *Notice Required.* An attorney making a limited appearance in a case must file a notice of limited appearance with the court. The notice must identify:

(1) the attorney making the limited appearance;

(2) the issues for which the attorney will represent the client;

(3) the party the attorney represents; and

(4) the service information for the attorney and the party.

(b) *Limited Scope.* An attorney who files a notice of limited appearance is the attorney for the issues designated in the notice of limited appearance but is not the attorney for matters outside the scope of the notice.

(c) *Duration.* A limited appearance continues until the court orders that the attorney may withdraw under Rule 10.2 or the case is finally concluded in the trial court. If the appearance is for a preliminary or temporary issue and the court defers its ruling, then the attorney's obligation to the court ends with the attorney's appearance at the preliminary hearing and the attorney may move to withdraw under Rule 10.2. An interim order subject to further consideration by the trial court at a later date does not extend the attorney's obligation to the court.

(d) *Service.* Service must be made on the attorney and the party in accordance with Rule 21a for issues designated in the notice of limited appearance. For matters outside the scope of the notice of limited appearance, service must be made on the party at the address listed for the party on the notice of limited appearance. Service directed to an attorney and not the party for matters outside the scope of the notice of limited appearance is not effective.

(e) *Court notices.* Where these rules require the trial court to provide written notice to the parties, the trial court must provide that notice to the attorney and the party in the manner directed by these rules.

Comment—2018

Consistent with Texas Disciplinary Rule of Professional Conduct 1.02(b), an attorney may limit the scope, objectives, and general methods of representation if the client consents after consultation. This rule addresses the attorney's responsibilities to the court and opposing counsel when an attorney represents a client in court for a limited purpose. The rule does not otherwise define the scope or method of representation by a lawyer, and instead leaves this to the lawyer and client to address within their engagement agreement.

Rule 10. Withdrawal of Attorney

Rule 10.1. Withdrawal from General Appearance [Current text of Rule 10]

An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the party, the motion shall state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion; the party's last known address and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the attorney in charge withdraws and another attorney remains or becomes substituted, another attorney in charge must be designated of record with notice to all other parties in accordance with Rule 21a.

Rule 10.2. Withdrawal from Limited Appearance

(a) *Motion required.* An attorney seeking to withdraw from a limited appearance filed under Rule 8.2 must move to withdraw from the representation. The trial court must permit the withdrawal if the motion includes:

(1) the client's consent in writing to the withdrawal;

(2) a statement that the other parties do not oppose the motion;

(3) the last known mailing address of the client;

(4) a statement of any pending trial setting; and

(5) the attorney's certification that all the tasks required by the notice of limited appearance have been completed.

(b) *Substitution.* If a motion to withdraw includes an appearance by another attorney to substitute for the withdrawing attorney, then the motion need only state that the substituting attorney has assumed responsibility for all uncompleted matters within the scope of the notice of limited appearance and the client has consented to the substitution. The motion must be signed by the withdrawing and the substituting attorney.

(c) *Order.* If the motion to withdraw is opposed by the client or another party, then the court must determine whether the attorney has fulfilled the attorney's responsibilities to the court for matters included in the notice of limited representation, and if so, permit the attorney to withdraw. The court must not impose further conditions upon granting leave to withdraw.

(d) *Service.* The withdrawing attorney must serve a copy of the court's order permitting withdrawal on all parties.

The Supreme Court of Texas

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

July 5, 2017

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Rules on Enforcement of a Foreign Judgment or Arbitration Award in Family Law Cases. HB 45, passed by the 85th Legislature, directs the Court to adopt evidentiary and procedural rules to ensure that neither the Constitution nor public policy is violated by the application of foreign law or the recognition or enforcement of a foreign judgment or arbitration award in an action under the Family Code. Section 2 of the bill adds to the Government Code Section 22.0041, which contains the rulemaking directive and enumerates requirements for the rules. The Family Law Section of the State Bar and the Texas Family Law Foundation have offered to assist in writing these rules, and the Committee should work with them in preparing its recommendations. Because section 3 of the bill requires that the rules be adopted by January 1, 2018, the Committee should conclude its work by its October 27, 2017 meeting.

Supersedeas Rules for State-Actor Appellants. HB 2776, passed by the 85th Legislature, amends the Government Code to direct the Court to adopt rules providing that the right of a state-actor appellant under Section 6.001(b)(1)-(3) of the Civil Practice and Remedies Code to supersede a judgment or order on appeal is not subject to being counter-superseded under Rule of Appellate Procedure 24, except in an appeal involving a contested-case, administrative-enforcement action. Section 2 of the bill requires the rules to be adopted by May 1, 2018.

Forms for an Application for Injunctive Relief in Cyberbullying Cases. SB 179, known as David's Law and passed by the 85th Legislature, amends several state statutes to address cyberbullying of minors. Section 11 of the bill adds Chapter 129A to the Civil Practice and Remedies Code and authorizes a victim of cyberbullying to seek injunctive relief against the perpetrator. Civil Practice and Remedies Code Section 129A.003 directs the Court to promulgate forms for an application for injunctive relief under the chapter and enumerates requirements for the forms.

Texas Rule of Appellate Procedure 11. In the attached memorandum, the State Bar Court Rules Committee proposes amendments to Rule of Appellate Procedure 11.

Procedural Rules on Limited-Scope Representation. In its December 6, 2016 report, the Texas Commission to Expand Civil Legal Services recommends that the Court adopt procedural rules to address issues raised by limited-scope representation. The Court requests the Committee to draft rules for the Court's consideration. The Committee should solicit input from the family-law bar in doing so. The Commission's report is available through the Court's website.

Local Rules. Rule of Civil Procedure 3a and Rule of Judicial Administration 10 require the Court to approve any new or amended local rule of a trial court. The Court asks the Committee to propose a new process and corresponding rule amendments that remove the primary responsibility for approving the local rules of trial courts from the Supreme Court. The Committee should consider:

- whether statewide rules should define what must be in a local rule, rather than a standing order;
- whether the regional presiding judge, the regional court of appeals, or both should be required to approve local rules of trial courts and whether the process should be different for rules that only apply to criminal cases;
- whether trial courts should be able to adopt certain kinds of rules without prior approval of a supervising court; and
- a process for Supreme Court review of a proposed or enacted local rule at the request of any person.

Texas Rule of Civil Procedure 99. Subsections (b) and (c) set the deadline for filing an answer as "10:00 a.m. on the Monday next after the expiration of twenty days after the date of service." The Court asks the Committee to consider whether the deadline should be simplified and to draft any recommended amendments.

Subsection (d) states: "The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies." The advent of e-filing has rendered this language outdated. Filers want to avoid paying additional fees for service copies of the petition by printing out the copies themselves and having the clerk return the citation by email. But some trial court clerks refuse to provide a citation by email. The Court asks the Committee to consider what changes to Rule 99 are needed to update the process for issuing a citation on an e-filed petition and to draft any recommended amendments. The Committee should consider whether the rule should instruct the clerk to return a citation on an e-filed petition by email.

The Court asks the Committee to consider whether any other changes are necessary to conform the text of Rule 99 to modern practice.

Civil Case Information Sheet. Texas Rule of Civil Procedure 78a requires the filing of a civil case information with a petition that initiates a new civil lawsuit or requests modification or enforcement of an order in a family-law case. Appendix A to the Rules of Civil Procedure contains a form for the civil case information sheet. The Office of Court Administration has reported to the Court that all the information required by the civil case information sheet is captured independently by the e-filing system when a petition is e-filed. The Court asks the Committee's advice whether Rule 78a and Appendix A should be repealed or amended to apply to a smaller subset of cases.

Texas Rule of Civil Procedure 167. Rule 167.2(e)(2) imposes a 60-day waiting period after the appearance of the offeror or offeree, whichever is later, before an offer of settlement can be made under the rule. Subsection (b)(4) requires that the terms of a settlement offer include "attorney fees . . . that would be recoverable up to the time of the offer." Practitioners report that the 60-day waiting period is often unnecessary and increases the amount required to settle a claim under the rule. The Court asks the Committee's advice whether the 60-day waiting period should be eliminated or shortened.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachment

Report of the Texas Commission to Expand Civil Legal Services

December 6, 2016

Other incubators and incubator-type programs are in development across the state.[47] Legal incubators alone cannot close the justice gap. Since the first one was created in 2007, only about 530 lawyers in the country have graduated from an incubator.[48] But incubators have an important part to play in the modest-means pipeline. They can meet the needs of some clients and some new law-school graduates; they can teach lawyers how to make a living serving modest-means clients; and they can serve as a visible reminder to the legal community that serving clients who are unable to pay full price "is a moral obligation of each lawyer as well as the profession generally."[49] The Texas Commission thus urges the Court to endorse and promote both existing incubators and the creation of additional legal incubators in the state.

Recommendation 7. ***The Court should consider amending court and ethics rules to address and clarify issues raised by limited-scope representation.***

a. Limited-Scope Representation: What It Is and How It Can Help

Limited-scope representation—also called "unbundling"—is a legal-services model that enables litigants who would otherwise be self-represented to receive some assistance of counsel.[50] In short, a lawyer provides discrete, agreed-upon legal services to a client rather than making a general appearance or handling all aspects of the client's legal problem.[51] Examples of tasks that may be appropriate for limited-scope representation include:

- advising a client about procedures for filing a claim;
- appearing on behalf of a client at a single hearing;
- preparing or "ghostwriting" a letter or court document;
- preparing or responding to a demand letter; and
- negotiating a settlement.

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[47] *See* LEGAL INCUBATORS SUBCOMMITTEE REPORT, *supra* note 44, at 4–5.

[48] STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS'N, 2016 COMPREHENSIVE SURVEY OF LAWYER INCUBATORS 12 (August 2016), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_comprehensive_survey_lawyer_incubators.authcheckdam.pdf (on file with the Court).

[49] TEX. DISCIPLINARY RULES PROF'L CONDUCT pmbl. ¶ 6.

[50] *See generally* KENNON L. WOOTEN ET. AL, REPORT OF THE LIMITED SCOPE REPRESENTATION SUBCOMMITTEE TO THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES (2016) [hereinafter LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT] (Appendix E).

[51] *See* STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS'N, UNBUNDLING FACT SHEET (June 2, 2011), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_fact_sheet.authcheckdam.pdf (on file with the Court).

Limited-scope representation is not appropriate for every case or client. It is not suitable for matters that are complex or that cannot be divided into discrete legal tasks.[52] But it can and is being used successfully in many types of civil legal matters to provide some assistance to litigants who cannot afford full-service representation. One commentator has noted that limited-scope representation "is likely to be used more in uncontested and modestly-contested family law cases than in any other field of litigation."[53] Other cases that may lend themselves to limited-scope representation are consumer law, probate, insurance coverage, landlord–tenant, and small claims.[54] Outside the litigation context, it may be suitable for real-estate and small-business transactions.

Promoting the increased use of limited-scope representation in Texas could provide affordable legal services for some clients, spur the development of more cost-efficient legal-services models, and bolster the practice of law in underserved communities.[55] Some lawyers and judges have expressed concerns about limited-scope representation, including that:

- a lawyer's involvement in only part of the case could leave the client worse off;
- the client may not know how to proceed at the conclusion of the representation;
- the court and opposing counsel will not know whether to send court papers and legal notices to the limited-scope attorney or the client; and
- the court may refuse to permit a lawyer retained under a limited-scope agreement to withdraw from a case after the lawyer has completed the agreed-upon tasks.

But these concerns can be mitigated by careful case evaluation by the lawyer, clear lawyer–client agreements, and rules that address issues that frequently arise from limited-scope representation.

The Texas Access to Justice Commission's website provides many resources on limited-scope representation, including templates for a service agreement, a task- and issue-assignment checklist, a notice of limited representation, and a motion to withdraw.[56] Although the Texas Disciplinary Rules of Professional Conduct allow for it, the Texas Rules of Civil Procedure lack specific guidance on how to handle limited-scope representation in Texas courts.

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[52] *See* M. Sue Talia, *Limited Scope Representation*, *in* STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AM. BAR ASS'N, REINVENTING THE PRACTICE OF LAW 7 (Luz Herrera ed., 2014) [hereinafter REINVENTING THE PRACTICE OF LAW] (on file with the Court); *see also* Comm. on Prof'l Responsibility & Conduct, St. Bar of Cal., *An Ethics Primer on Limited Scope Representation*, ETHICS HOTLINER, Fall 2004, at 2, http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=_gb8teBEN0s%3D&tabid=834 (on file with the Court).

[53] Phillip C. Friday, *Limited Scope Representation: One Answer to* Pro Se *Litigation*, IN CHAMBERS, Fall 2013, at 9.

[54] *See id.* at 10; *see also* REINVENTING THE PRACTICE OF LAW, *supra* note 52.

[55] *See* LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 3.

[56] *Limited Scope Representation*, TEX. ACCESS TO JUST. COMM., http://www.texasatj.org/limited-scope-representation (last visited Nov. 30, 2016).

The Texas Commission recommends that the Court (1) solicit input from the bar on the use of limited-scope representation to provide some affordable legal assistance to modest-means clients who otherwise would proceed unrepresented, and (2) commission a review of Texas court rules to determine whether amendments should be made to promote the use of limited-scope representation in Texas.

b. Court and Ethics Rules

Approximately twenty states and one Texas county (Travis) have adopted procedural rules to govern limited-scope representation in civil court proceedings.[57] Topics often addressed by these rules include:

- disclosure of "ghostwriting"—whether a lawyer who prepares legal papers to be filed with the court must disclose in those papers that the lawyer prepared them for the client;
- how a lawyer gives notice to the court and third parties that she is making a limited appearance;
- serving court papers and notices while a limited appearance is in effect; and
- how a lawyer withdraws from a pending court case after completing limited-scope representation.[58]

The jurisdictions with limited-scope-representation rules do not approach these topics uniformly. The Report of the Limited Scope Representation Subcommittee highlights alternative approaches to each topic and includes a chart summarizing each state's rules.[59] Because the study and drafting work needed to promulgate statewide procedural rules on limited-scope representation could take time, the Texas Commission encourages the Court to develop a local-rule template that counties can adopt in the interim and to enlist the help of the Office of Court Administration and the district and county clerks in measuring the rule's effectiveness.[60]

Finally, the Court should also consider whether the Texas Disciplinary Rules of Professional Conduct should be amended to align more closely with the ABA Model Rules of Professional Conduct on limited-scope representation. There are two key differences between the applicable Texas and ABA rules.

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[57] *See* LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 8.

[58] *See id.* at 8–9.

[59] *See id.* at Exhibit 1.

[60] The Court has previously approved local-rule templates for widespread adoption on topics like electronic filing that were later incorporated into the statewide procedural rules. *See, e.g.*, Misc. Docket No. 11-9118 (June 28, 2011) (Final Approval of Amendments to the Texas Rules of Appellate Procedure and Templates for Local Rules Governing Electronic Copies and Electronic Filings in the Courts of Appeals).

First, while Rule of Professional Conduct 1.02(b), consistent with its Model Rule counterpart, permits limited-scope representation, the wording of the rules differs in two ways that may be important.

ABA Model Rule 1.2(c)	**Texas Disciplinary Rule of Professional Conduct 1.02(b)**
"A lawyer may limit the scope of the representation if the limitation is *reasonable under the circumstances* and the client gives *informed* consent." (Emphasis added)	"A lawyer may limit the scope, objectives and general methods of representation if the client consents after consultation."

The first is that Model Rule 1.2(c) only permits a lawyer to limit the scope of representation "if the limitation is reasonable under the circumstances," whereas Rule 1.02(b) does not contain that limitation.[61] The second is that Model Rule 1.2(c) requires that a client give "informed consent," but under Rule 1.02(b), consent after consultation suffices.[62] Amending Rule 1.02(b) to align more closely with the language of its Model Rule counterpart may allay some of the concerns that have been expressed about limited-scope representation.

Second, Model Rule 6.5 ("Nonprofit And Court-Annexed Limited Legal Services Programs") relaxes the conflict-of-interest standards for lawyers that provide short-term, limited legal services under a program sponsored by a nonprofit organization or a court.[63] The comments to the rule recognize that the programs contemplated by the rule normally operate under circumstances that make it infeasible for a lawyer to screen for conflicts of interest, which a lawyer generally must do before undertaking legal representation. Forty-six states have adopted Model Rule 6.5 or a substantially similar rule.[64] Texas has not. Incorporating Model Rule 6.5 into the Texas Disciplinary Rules of Professional Conduct may help to reduce lawyers' concerns about engaging in limited-scope representation and promote the practice in Texas.

Recommendation 8. ***A primary objective of future rulemaking projects should be to make the civil justice system more accessible to modest-means clients.***

The Texas Commission's final recommendation is that, where appropriate, a primary objective of future projects to make or amend the rules that govern the civil justice system in Texas should be to make the system more accessible to modest-means clients.

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[61] *Compare* MODEL RULES OF PROF'L CONDUCT r. 1.2(c), *with* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.02(b).

[62] *See* MODEL RULES OF PROF'L CONDUCT r. 1.2(c); TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.02(b).

[63] *See* MODEL RULES OF PROF'L CONDUCT r. 6.5 & cmts.

[64] *See* LIMITED SCOPE REPRESENTATION SUBCOMMITTEE REPORT, *supra* note 50, at 7.

For example, projects involving rules of civil or appellate procedure should focus on streamlining court procedures to make litigation less costly and easier for self-represented litigants to navigate. The Court has already begun this effort by asking the Supreme Court Advisory Committee to review all of the discovery rules and recommend changes to increase efficiency and decrease the cost of litigation.[65]

The Court should also consider whether changes to the Rules and Regulations Governing the Participation of Qualified Law Students and Qualified Unlicensed Law School Graduates in the Trial of Cases in Texas could improve modest-means clients' access to legal representation. Rule I recognizes the profession's "responsibility to provide competent legal services for all persons" and states that the rules are promulgated in furtherance of that responsibility. But Texas's rules are more restrictive than those of many other states. For example, Rule II(B) requires that a student have completed at least two years of law school or, if the student is participating in a clinic for academic credit, be in the second semester of the second year of law school. But other states' rules permit a first or second-year student to obtain a student bar card under certain circumstances.[66]

Changes to generally applicable court rules may only have an indirect, incremental effect on the justice gap. But in order to close the gap, Texas must attack it from every angle. The Court should take every opportunity to make a change—however modest—that could increase access to the civil justice system.

[65] Letter from Nathan L. Hecht, Chief Justice, Supreme Court of Tex., to Charles L. "Chip" Babcock, Chair, Supreme Court Advisory Comm. 2 (Apr. 18, 2016) (on file with the Court).

[66] *See generally* TEX. TECH UNIV., FIFTY-STATE SURVEY: STUDENT BAR CARDS (2016) (on file with the Court).

Report of the State Bar of Texas & Other Referral Services Subcommittee of the Texas Commission to Expand Civil Legal Services

Members: Frank E. Stevenson, II (Chair), Faye M. Bracey, Angelica Maria Hernandez, William O. Whitehurst, Jr.

October 2, 2016

In support of the Commission's goal of increasing access to legal services by persons with modest means, the State Bar will evaluate adding a feature to the TexasBar.com Find a Lawyer directory that allows attorneys to indicate whether they accept payment for legal services on a sliding scale or flat fee basis.

This option might be added to the "Services Provided" portion of the attorney profiles, where attorneys currently list whether they provide translation services or ADA-accessible client services. Other options can be considered.

To encourage participation, the State Bar would notify all Texas attorneys when they are asked to review their profiles that they have the option of indicating their acceptance of sliding scale or flat fee basis engagements.

The directory would be searchable based on fee options specified, in combination with practice areas and other profile information. So, a member of the public could, for example, search for family lawyers in Austin who accept flat fees.

Issues for discussion would be how the State Bar would define sliding scale fees and flat fees; whether suggested fee schedules could or would be published, and if so, whether attorneys should agree to accept certain fees; and how the State Bar would present and market the feature in a way that encourages attorneys and the public to use alternative fee approaches to serve people of modest means.

If this idea is endorsed or adopted by the Commission, the SBOT Board will be promptly notified and any approvals sought. Once approved, the details of its implementation would be directed by the State Bar with direct input from and regular updates to the Commission.

Chart Summarizing Limited Scope Representation (LSR) Provisions on a State-by-State Basis
(Prepared with Information Collected in July 2016)

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
AL[1]	RUC + IC + WR[2] (with exceptions)	Yes	Ala. R. Civ. P. 87.	May rely on client unless reason to believe otherwise.	Must receive written notice of LSR.	Must indicate lawyer assistance but not name of lawyer.
AK	RUC + CAC	Yes	Ark. R. Civ. P. 64(b).		Must receive written notice of LSR.	
AZ	RUC + IC	Yes	Ariz. R. Civ. P. 5.1, 5.2, Ariz. R. Fam. Law P. 9.	Reasonable inquiry required.	Must have knowledge of LSR and identity of lawyer providing LSR.	No
AR	RUC + IC	Yes				
CA	N/A	Yes*	Cal. Rules of Court, 3.35–3.37.			No
CO	RUC + IC	Yes	Colo. R. Civ. P. 121, Colo. App. R. 5.	Reasonable inquiry of the client required, plus independent reasonable inquiry if reason to believe false or materially insufficient.	Must have knowledge of LSR.	Yes
CT	RUC + IC	Yes	Conn. Rule of Professional Conduct 1.16.		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	
DC	IC	Yes	Administrative Order 14-10, Sup. Ct. of D.C. (June 16, 2014).			
DE	RUC + IC	Yes				
FL	RUC + IC + WR	No	Fla. Fam. L.R.P. Rule 12.040.		Must have knowledge or notice of LSR with time	

[1] The state abbreviations in this chart follow the USPS official mailing abbreviations for the states.

[2] For ease of reference, the following abbreviations are used in this chart: (a) "RUC" = LSR allowed when reasonable under the circumstances; (b) "IC" = LSR allowed with the client's informed consent; (c) "CAC" = LSR allowed with the client's consent after consultation; and (d) "WR" = a written agreement regarding LSR is required.

*This state has adopted a version of the ABA Model Rule 6.5 but adapted it to fit the state's numbering system or specific ethical-rule scheme.

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
					period and subject matter, limited to subject matter of LSR.	
GA	RUC + IC	No				
HI	CAC	Yes				
ID	RUC + IC	Yes	Idaho R. Civ. P. 11(b)(5).			
IL	RUC + IC	Yes	Ill. Sup. Ct. R. 11, 13.	May rely on client's representation of facts without further investigation unless knowledge that representations are false.		No
IN	RUC + IC	Yes	Ind. Trial Rule 3.1(I).			
IA	RUC + IC + WR (with exceptions)	Yes	I.C.A. Rule 1.404, 1.423(3), 1.442(2).	May rely on client's representation of facts unless reason to believe representation is false or materially insufficient, in which case reasonable inquiry required.	Must have knowledge or be provided with notice of time period and subject matter within LSR.	Yes
KS	RUC + IC + WR	No	Kan. Sup. Ct. R. 115A.			Must indicate lawyer assistance but not name of lawyer.
KY	RUC + IC	Yes				
LA	RUC + IC	Yes	La. Dist. Ct. R. 9.12, 9.13.			
ME	RUC + IC + CAC	Yes	Me. R. Civ. P. 11(b), 89(a).	May reasonably rely on information provided by the client.	Must receive written notice of a time period within which only the LSR attorney should be contacted.	
MD	RUC + IC	Yes				
MA	CAC (Ethical rules), RUC + IC (Supreme	Yes*	In flux. But see: Massachusetts Standing			Must indicate lawyer assistance but not name of

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	Judicial Court Order)		Orders of the Supreme Judicial Court, *In Re: Limited Assistance Representation* (2016).			lawyer.
MI	CAC	Yes				
MN	RUC + IC	Yes				
MS	RUC + IC	Yes				
MO	IC + WR (with exceptions)	Yes	V.A.M.R. 55.03(c), (e).		Must receive written notice of time period of LSR.	No
MT	RUC + IC + WR (with exceptions)	Yes	Mont. R. Civ. P. 4.2.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case independent reasonable inquiry required.	Must receive written notice of time period and subject matter of LSR.	No
NE	RUC + IC	Yes	Neb. Ct. R. of Prof. Cond. § 3-501.2(e).		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	Yes
NV	RUC + IC	Yes	Nev. St. 8 Dist. Ct. R. 5.28 (Local rule for 8th Judicial District).			
NH	RUC + IC	Yes	N.H. Sup. Ct. Civ. R. 3, 17.		Must receive written notice of the time period in which opposing counsel shall communicate only with LSR lawyer.	No
NJ	RUC + IC	Yes				
NM	RUC + IC	Yes*	N.M. Dist. Ct. R. Civ. P. 1-089, N.M. Mag. Ct. R. Civ. P. 2-107, 2-108.			
NY	RUC + IC + Notice	Yes*				

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	to tribunal and/or opposing counsel where necessary					
NC	RUC	Yes				
ND	CAC	Yes	N.D.R. Civ. P. 11(e), N.D.R. Ct. 11.2(d).			
OH	RUC + communicated to client, "preferably" in writing	Yes				
OK	RUC + IC	Yes				
OR	RUC + IC	Yes				
PA	RUC + IC	Yes				
RI	RUC + IC	Yes				
SC	RUC + IC	Yes				
SD	RUC + IC	Yes				
TN	RUC + IC, "preferably" in writing	Yes	Tenn. R. Civ. P. 5.02, 11.01.			
TX	CAC	No				
UT	RUC + IC	Yes	Utah R. Civ. P. 74, 75.		Must receive written notice of the time and subject limitations of representation.	
VT	RUC + IC	Yes	Vt. R. Civ. P. 79.1(h), Vt. R. Fam. P. 15(h).			
VA	CAC	Yes				
WA	RUC + IC	Yes	Wa. Super. Ct. Civ. R. 4.2, 11, 70.1.	Attorney may rely on self-represented person's facts (after reasonable inquiry) unless reason to believe representations are false or materially	Must have knowledge or written notice of time and subject matter limitation of LSR.	

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
				insufficient, in which case attorney must make independent reasonable inquiry.		
WV	CAC	No				
WI	RUC + IC + WR (with exceptions)	Yes*	Wis. Stat. § 802.045.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case attorney must make independent reasonable inquiry.	Must receive notification from LSR lawyer.	Must indicate lawyer assistance but not name of lawyer.
WY	RUC + IC (or Rule 6.5) + WR (unless phone consultation only)	Yes	Wyo. Unif. R. Dist. Cts. 102.			

Supreme Court of Texas Commission to Expand Civil Legal Services
Committee Report—Limited Scope Representation
September 29, 2016

The Supreme Court of Texas created the Texas Commission to Expand Civil Legal Services in November 2015 to examine ways to reduce the widening justice gap in Texas—a gap that reflects Texans' unmet needs for civil legal services.[1] The justice gap is not unique to Texas. The cost of legal services has become prohibitive for most Americans. For example, in a 2013 study conducted in a Midwestern city typical of many US communities, researchers found that, of the people surveyed with a civil-justice need, 46% relied on self-help, 16% relied on help from family and friends, and 16% did nothing; only 22% engaged a lawyer to address that need.[2]

Although Texas has not gathered similar data to determine the level of self-representation in Texas' state and federal courts, the available data suggest that the number of self-represented litigants in Texas is rising dramatically. This rising number of self-represented litigants strongly suggests that many Texans have unmet needs for civil legal services. In many instances, it is because they cannot afford a lawyer.

One way to address the unmet legal needs that define the justice gap is through limited scope representation. Limited scope representation allows lawyers to assist clients with discrete legal tasks—like writing a letter, filling out forms, drafting court documents, or making a single court appearance—rather than providing representation in all aspects a legal matter and without creating the full range of duties for a matter. The Commission has studied state practices and has heard from experts about how to frame limited-scope-representation rules for wider availability. It has studied the ways that other states have implemented these kinds of rules. This report summarizes the findings and recommendations of the Commission's Limited Scope Representation Committee.

[1] *See* Sup. Ct. of Tex., Misc. Docket No. 15-9233, *Order Creating the Texas Commission to Expand Civil Legal Services* (Nov. 23, 2015) (attached hereto as **Appendix Item 1**).

[2] Additional information about the Community Needs and Services Study, which was funded by the National Science Foundation and American Bar Foundation, is available in a 2014 report, Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study, authored by Rebecca L. Sandefur. For additional information relating to unmet needs in the realm of access to legal services in the United States, see pages 11–14 of the ABA Report on the Future of Legal Services in the United States, issued in August 2016.

Limited Scope Representation Committee's Goals

The Commission's and Limited Scope Representation Committee's discussions regarding limited scope representation yielded the following goals for the committee:

- Define limited scope representation.
- Identify how limited scope representation might reduce the justice gap.
- Identify risks associated with the use of limited scope representation.
- Identify current rules and statutes addressing limited scope representation, and identify potential statutory or rule revisions that warrant further consideration.
- Compile a list of resources and reference materials for rule-makers and other interested parties.
- Follow up as directed by the Commission.

1. Limited Scope Representation Defined

Limited scope representation happens when a lawyer provides discrete, agreed-upon legal services to a client, rather than handling all aspects of a legal problem.[3] In court proceedings, the lawyer and client agree to limit the scope of the lawyer's involvement in the legal action to agreed-upon tasks. For example, a lawyer may advise a client about procedures for filing a claim, appear at a single hearing, or prepare or "ghostwrite" a letter or court document, but that lawyer will not make a general appearance as counsel of record in the case. Other kinds of tasks include preparing or responding to a demand letter or negotiating a settlement. A lawyer who provides limited scope representation may charge an hourly rate or a flat fee for specific services by task. Like any other rates a lawyer charges, limited-scope-representation rates are subject to the requirements set by law and the Texas Disciplinary Rules of Professional Conduct.

[3] The American Bar Association's (ABA's) 2011 Unbundling Fact Sheet (attached hereto as **Appendix Item 2**) and the Texas Access to Justice Commission's 2011 Limited Scope Representation Fact Sheet (attached hereto as **Appendix Item 3**) contain definitions of, and other information about, limited scope representation. As indicated in the ABA's Unbundling Fact Sheet, limited scope representation is also referred to as "unbundling."

2. Using Limited Scope Representation to Address Needs within the Justice Gap

The committee discussed needs in the justice gap and the ways in which limited scope representation might help to address them. These needs include the following:

- *Matching Consumers with Affordable Civil Legal Services:* Law cannot be set apart from the world surrounding it. Technology and the communication age have resulted in a global shift in the relationship between consumers and providers of services. Legal services are no exception. Only two categories of legal consumer existed in the past—the self-represented and the lawyer-represented. In recent years, however, many non-legal service providers have conceived models that provide resources to the legal consumer who chooses not to engage a lawyer. Some of these consumers, particularly those with limited income and tight budgets, present an unmet need for affordable legal representation. In contrast to self-help options and the risks they can present, a lawyer can provide valuable advice beyond forms and databases and effectively assist with or perform discrete legal tasks for a client. This targeted legal representation helps people navigate the legal system better than they would without representation, on an affordable basis, and it presents a business opportunity for underemployed lawyers.

- *Developing Cost Efficient Legal Services Models:* A limited-scope provider may develop expertise in providing specialized service in areas widely needed by large numbers of consumers. This expertise could extend to adopting specialized technology allowing for the quick preparation and review of court and other legal documents most in demand. Mobile outreach and alternative settings to traditional law offices for specific legal tasks are possibilities. In this sense, technology can facilitate legal innovation to simplify the legal process.

- *Promoting Attorney Involvement:* Lawyers want limited-scope-representation opportunities to provide civil legal services to underserved communities. But lawyers are reluctant to represent clients who have no or limited ability to pay for legal representation without an option to limit the scope of the work to specific tasks. A limited-scope agreement provides greater certainty that both the client and the lawyer know the representation will be task-specific and often short-lived. This certainty, and the discrete nature of the representation, can facilitate both affordable limited scope representation and greater lawyer volunteerism.

3. Risks Relating to Limited Scope Representation

The committee has noted concerns that could arise with broader use of limited scope representation. Chief among these concerns are the following:

- *Client Satisfaction at the Conclusion of the Representation:* With piecemeal representation, a client may not know how to proceed at the conclusion of the representation. This can lead to requests for additional legal services, which can lead to requests for additional funds from a client who cannot afford to pay more money to a lawyer. The remaining legal problem also might swallow any forward progress made by the lawyer who handled part of the matter. Some lawyers and judges question whether a lawyer will have an incentive to be judicious in allocating time and resources unless the lawyer makes a general appearance in a case or otherwise assumes the full responsibilities of legal representation in a matter. In other words, in their view, a lawyer will better represent a client knowing that the representation ends when the case or matter has concluded. Critics of limited scope representation believe the risk of malpractice claims is higher when a lawyer is involved with only discrete aspects of a case or matter. They caution that a lawyer may have insufficient understanding of the broader context to provide sound legal advice for discrete aspects of the case or matter.

- *Undue Burden on the Courts and Third Parties:* A lawyer who appears on a limited basis in an adversarial proceeding can place an additional burden on courts and on parties, who must determine who should receive court papers, notice of hearings, and other documents, and who must contend with a self-represented party who undertakes the tasks the lawyer did not agree to provide.

- *Mission Creep:* Lawyers may be hesitant to engage clients for limited-scope work in litigation matters, for fear that a court will require them to continue representation even after they complete agreed-upon tasks. Conversely, broader availability of limited scope representation could encourage more clients to choose limited scope representation over the full-service representation that they need.

Supporters of limited scope representation respond to these concerns by observing that a lawyer who represents a client on a limited basis must meet the same obligations of professionalism required for any other lawyer. The scope of the work is limited, but the lawyer's ethical obligations are not. A lawyer-client relationship, and all that it entails, exists for the tasks at hand. Existing data suggests that the malpractice risk for limited scope representation is no higher than the malpractice risk in full-service representation.

Supporters also point out that legal advice and help in connection with specific tasks is better than no legal advice at all, and that most limited-service clients are converting from self-representation rather than full-service representation. All levels and types of Texas state and federal courts are seeing exponential increases in self-represented litigants. An unbundling of legal services can meet some needs that will otherwise go unmet because full-service representation is beyond the financial reach of many Texas consumers. Finally, limited-scope-representation supporters note that the American Bar Association (ABA) and other states have crafted rules to address the requirements and risks associated with limited scope representation.[4]

Limited scope representation is not for every case or client. One commentator has noted that "[l]imited scope representation is likely to be used more in uncontested and modestly-contested family law cases than in any other field of litigation."[5] Limited scope representation may also be suitable for certain cases involving, for example, consumer-law issues, probate issues, insurance-coverage issues, and landlord-tenant issues, as well as for small-claims cases in which the amount in controversy does not justify the cost of full-service representation.[6] Outside the litigation context, certain transactions involving small businesses or real-estate matters may be well-suited for limited scope representation. But limited scope representation is not well-suited for any matter or case that cannot be unbundled into discrete legal tasks due to its complexity, the existence of highly technical issues, or any other reason.[7] Moreover, regardless of the subject matter of a particular matter or case, limited scope representation is not well-suited for certain types of clients—e.g., clients who either need or expect help with each legal task at hand.

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[4] Many publications address benefits and risks relating to limited scope representation. Examples include: (1) ABA Section of Litigation, *Handbook on Limited Scope Assistance* 10–13 (2016); (2) ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 3–8 (Luz Herrera ed., 2014); (3) Colorado Bar Association, *Practical and Ethical Considerations to Integrating Unbundled Legal Services—A Toolkit for Court Leadership* 34–36 (2015); (4) Institute for the Advancement of the American Legal System, *Unbundling Legal Services: Options for Clients, Courts & Counsel* 2–4 (2015); and (5) State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

[5] Phillip C. Friday, *Limited Scope Representation: One Answer to Pro Se Litigation*, In Chambers, Fall 2013, at 9.

[6] *See* ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 7 (Luz Herrera ed., 2014); Phillip C. Friday, *Limited Scope Representation: One Answer to Pro Se Litigation*, In Chambers, Fall 2013, at 10; State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

[7] *See* ABA Standing Committee on the Delivery of Legal Services, *Reinventing the Practice of Law* 7 (Luz Herrera ed., 2014); State Bar of California Committee on Professional Responsibility and Conduct, *An Ethics Primer on Limited Scope Representation* 2 (2004).

4. Legislation and Rules Relating to Limited Scope Representation

a. Legislation

As indicated above, family law is one area in which the numbers of self-represented litigants is dramatically increasing. In 2011, the Texas Legislature adopted the Texas Collaborative Family Law Act, which incorporates limited scope representation into family law cases in connection with pretrial resolution of family law disputes. The State Bar of Texas has a Collaborative Law Section that devotes its efforts to educating the legal and client communities in the area of collaborative law.

At this time, the committee does not anticipate that any legislative proposals in the area of limited scope representation are needed for the upcoming legislative session. The majority of states that have developed limited scope representation processes have done so through their ethics rules and their courts' procedural rulemaking powers.

b. Rules

Like the ABA's Model Rules of Professional Conduct and the ethics rules in almost every other state in the United States,[8] the Texas Disciplinary Rules of Professional Conduct allow clients and lawyers to agree to limited scope representation. Texas Rule 1.02(b) states: "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." ABA Model Rule 1.2(c) states: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." As indicated, Model Rule 1.2(c)—unlike Texas Rule 1.02(b)—requires any limitation on the scope of the representation to be "reasonable under the circumstances" and requires further that the client provide "informed consent," as opposed to mere consent after consultation.[9]

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[8] According to the ABA, as of 2011, 41 states had adopted Model Rule 1.2(c) or a substantially similar rule. See **Appendix Item 2** (the ABA's Unbundling Fact Sheet). Independent research and a 2014 Chart Summarizing Adoption of ABA Model Rule of Professional Conduct 1.2(c), however, reveal that the states which have not adopted Model Rule 1.2(c) or a substantially similar rule nonetheless have ethics or procedural rules that allow limited scope representation to occur in civil proceedings. California appears to be the lone state that does not have an ethics rule addressing limited scope representation; however, California addresses limited scope representation through rules of procedure instead, and those rules explicitly allow limited scope representation to occur. See 2014 ABA Chart: Adoption of ABA Model Rule of Professional Conduct 1.2(c) (attached hereto as **Appendix Item 4**).

[9] The complete text of and comments to Texas Rule 1.02(b) and ABA Model Rule 1.2(c) are attached as **Appendix Item 5** and **Appendix Item 6** respectively. The Texas rule was adopted in 1989 and took effect in 1990. It has not been amended since it took effect.

Model Rule 1.2(c) was amended as part of "Ethics 2000, the ABA endeavor to review and amend the ABA Model Rules of Professional Conduct, which began in 1997 and concluded with adopted revisions to the Model

Unlike the Texas Disciplinary Rules of Professional Conduct, the ABA Model Rules of Professional Conduct also contain provisions (in Model Rule 6.5) that relax conflict-of-interest standards for lawyers providing short-term limited legal services under a program sponsored by a nonprofit organization or court. Comments to Model Rule 6.5 recognize that the programs contemplated by the rule normally operate under circumstances that make it infeasible for a lawyer to screen for conflicts of interest as is ordinarily required before a lawyer undertakes legal representation.[10] Model Rule 6.5 would likely facilitate limited scope representation by Texas lawyers if it were adopted as a provision of the Texas Disciplinary Rules of Professional Conduct. As of the date of this report, 46 states have adopted Model Rule 6.5 or a substantively similar rule.

While Texas Rule 1.02(b) authorizes limited scope representation, it does not address the obligations that a lawyer who engages a client on a limited basis might have, including: (1) the kind of notice, if any, to give to the court and to adversarial parties of the representation; (2) the kind of disclosures, if any, to make to the client, the court, or adversarial parties when the representation ends or the lawyer otherwise withdraws from the representation; and (3) how to handle amendments to the scope of the representation.

The Supreme Court of Texas has not adopted statewide procedural rules that define a lawyer's obligations any differently for limited scope work. Statewide procedural rules govern a lawyer's withdrawal of representation in civil court proceedings, regardless of the degree of representation the lawyer has been providing. Rule 10 of the Texas Rules of Civil Procedure and Rule 6.5 of the Rules of Appellate Procedure provide that a lawyer must obtain the permission of the court to withdraw from representing a party in a pending case, after notifying the client and all parties to the case in writing, and the client may object to the motion. A court is not required to grant the

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Rules in 2002." ABA Standing Committee on the Delivery of Legal Services, *An Analysis of Rules that Enable Lawyers to Serve Self-Represented Litigants* (hereinafter referred to as the "ABA White Paper on Unbundling") 3 (2014). Prior to the Ethics 2000 amendment, ABA Model Rule 1.2(c) read as follows: "A lawyer may limit the objective of the representation if the client consents after consultation."

> The ABA Reporter's Explanation of Changes provides as follows:
>
> The [Ethics 2000] Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of the representation to be provided a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low or moderate-income persons who otherwise would be unable to obtain counsel.

ABA White Paper on Unbundling 4 (2014).

[10] The complete text and comments to Model Rule 6.5 are attached hereto as **Appendix Item 7**.

motion to withdraw, and may impose further conditions upon granting leave to withdraw. Does the Texas ethics rule that allows limited scope representation, coupled with the procedural rules governing withdrawal, sufficiently address a lawyer's obligations when the lawyer is engaged on a limited basis in a case?

The Supreme Court of Texas has approved local rules for cases pending in Travis County that formally address limited scope representation. Under these rules, a lawyer may file a Notice of Limited Appearance that defines the scope of the representation. A lawyer who has filed the notice has no responsibility for matters outside the scope of the notice. The local rules also provide a procedure for withdrawing from a case. The rules require the lawyer to certify that the limited scope tasks have been completed and obtain written consent to the withdrawal from the client and all other parties. A trial court retains discretion to deny withdrawal, but it is limited to a determination of whether the lawyer has completed the responsibilities set forth in the notice of limited appearance.[11]

While Texas' statewide procedural rules do not contemplate task-based legal services in civil court proceedings, approximately 20 of the other states with ethics rules similar to Texas Rule 1.02(b) have adopted procedural rules relating to limited scope representation in civil court proceedings. One state—California—addresses limited scope representation in procedural rules alone.

States that have adopted procedural rules relating to limited scope representation employ different approaches to various aspects of the representation. Here are significant differences in key areas that could be addressed in Texas' procedural rules:

- *Disclosure:* In court proceedings, one question that arises is whether a lawyer who prepares legal papers to be filed with the court must disclose in those papers that the lawyer prepared (or "ghostwrote") them for the client. Some states, like California, do not require disclosure of legal assistance in preparation of documents when the lawyer has not appeared in the case. Other states, like Alabama, require a statement that a lawyer prepared a document filed with the court, but the lawyer need not sign the document or make a formal appearance representing the client. Still other states, like Colorado, provide that a lawyer must disclose the lawyer's name and contact information in connection with assistance with a filing, but the rules make clear that this disclosure does not constitute an appearance on behalf of the client in the case.

[11] The Travis County Local Rule is attached hereto as **Appendix Item 8**.

- *Notice to Third Parties:* Several states allow a lawyer to make a limited appearance in court and receive copies of all court filings by opposing parties. California, for example, requires a lawyer to file a Notice of Limited Scope Representation and serve the notice on opposing counsel. While that notice is on file, opposing parties must serve all court papers on the lawyer until the lawyer is permitted to withdraw. Many state rules specify that opposing counsel must communicate with the lawyer about matters within the scope of the appearance and may communicate directly with the party only about matters outside scope of the appearance.

- *Concluding the Representation:* Most states with limited-scope-representation rules expressly address the lawyer's obligations at the conclusion of the representation, including withdrawal in a pending court case when the lawyer has actively participated in the case. Those states further define the circumstances under which a court may allow for the withdrawal of a lawyer engaged for limited tasks.[12]

5. Recommendations

Based on the collective experiences of its members and the information provided to it, the Commission engaged in robust discussions about the risks and benefits of broader availability of limited scope representation. Although many states have adopted rules in recent years, there is little empirical data to test whether these rules help to address unmet legal needs or to validate perceived problems with limited scope representation. As part of any rule-making process in Texas, it will be critical to solicit input from Texas judges, lawyers, and clients about their experiences with limited scope representation. The committee does not take a position as to which rules better address the risks associated with limited scope representation while fostering its use in appropriate cases. Because more flexible representation arrangements could help to meet what are currently unmet needs, however, the committee recommends the following:

- *Pilot Projects*: To determine the efficiency, effectiveness, and workability of more widespread availability of limited scope representation, the committee

[12] A chart summarizing the various approaches to limited scope representation among the states is attached hereto as **Appendix Item 9**. The committee extends gratitude to Josiah Clarke, a third-year law student at the University of Texas School of Law, for his assistance with creating this chart.

recommends that interested counties pilot local rules, approved by the Supreme Court of Texas, to facilitate limited scope legal services in their jurisdictions. This allows for tailored approaches to develop in counties where the local judiciary has determined that limited scope representation could be a valuable tool in addressing the needs of local residents for civil legal services. It would also serve as a stopgap measure and an incubator of these kinds of services during the interim period of development of statewide rules.

- *Disclosure and Notice Rules*: The committee recommends that the Supreme Court of Texas examine the current rules of civil procedure to determine whether guidance is lacking for practitioners engaged in limited scope work in pending civil cases, including rules regarding disclosure of attorney assistance with legal pleadings and filings with the court, rules governing notice to the court and to third parties, and rules governing appropriate service of court papers by opposing parties and the court. That examination should encompass rules for cases in which the scope of the representation expands beyond the initial limited scope engagement.

- *Withdrawal Rules*: The committee recommends that the Supreme Court of Texas examine the current procedural rules that govern the appearance and withdrawal of counsel to determine whether the current rules adequately account for appearances for limited purposes, particularly upon conclusion of a limited scope representation. Because of the frequency with which limited scope representation appears to occur in family law matters, the committee also recommends consideration of whether there should be guidance tailored to family law judges, particularly those sitting in multi-county districts in Texas.

The Texas Access to Justice Commission's Rules and Legislation Committee and the Texas State Bar's Court Rules Committee are two entities that could assist the Supreme Court of Texas with any rule-related efforts. The Supreme Court Advisory Committee's input will also be critical in deciding whether—and, if so, how—to amend procedural rules to address issues relating to limited scope representation in Texas cases.

6. Resources

The attached appendix items are intended to assist the Commission in connection with its analysis and recommendations relating to limited scope representation. The list below represents examples of additional resources for limited scope representation. The items are hyperlinked to the extent possible, to facilitate access by readers of this report.

- ABA Unbundling Resources Center – This Center provides an extensive, free set of materials relating to limited scope representation, including links to the 2014 ABA White Paper on Unbundling that is referenced in footnote 9, the ABA Fact Sheet attached as Appendix Item 2, the chapter on limited scope representation from the book entitled *Reinventing the Practice of Law* that is referenced in footnotes 4 and 6–8, the ABA Handbook on Limited Scope Legal Assistance that is referenced in footnote 4, the ABA chart that is attached as Appendix Item 4, toolkits for limited scope representation (from the Institute for the Advancement of the American Legal System and Chicago Bar Foundation), a national database for professionals assisting self-represented litigants, and various reports, cases, ethics opinions, rules, and webinars relating to limited scope representation.

- ABA Model Rules of Professional Conduct – The ABA provides links to each Model Rule and all of the comments associated with each Model Rule.

- Texas Access to Justice Commission Materials
  - Limited Scope Representation Webpage – This webpage includes some basic information about limited scope representation, information about a webcast and other Continuing Legal Education presentations relating to limited scope representation, and information toolkits the Texas Access to Justice Commission prepared regarding limited scope representation.
  - Family Law Toolkit – available upon request (see webpage).
  - General Civil Law Toolkit – available upon request (see webpage).

- California State Court Resources – The Judicial Branch of California's webpage contains detailed information relating to limited scope representation, including definitions, tips for assessing the propriety of limited scope representation in various cases, guidance for working with a limited-scope lawyer, court forms and contracts for cases involving limited scope representation, and guidance to potential clients on finding a lawyer who provides limited scope representation.

- Colorado Bar Association Limited Scope Representation Toolkit – This toolkit is now in its second edition and is available upon request submitted to the committee or the Colorado Bar Association. Entitled *Unbundling and Limited Scope Representation: Practical and Ethical Considerations to Integrating Unbundled Legal Services*, this toolkit contains presentations, handouts, forms, client tools, additional information, and resources relating to limited scope representation.

- Practising Law Institute (PLI) Seminar on Limited Scope Representation – PLI provides links to M. Sue Talia's lectures and presentation materials for a program about the rapidly changing practice of limited scope representation in the family law context. The program was released on February 13, 2015.

- Article Regarding Randomized Experiment in Massachusetts Housing Court – This article describes the results of a randomized trial in which tenant clients received either limited scope representation or full-service representation in handling eviction disputes. The authors analyzed the effect of the two different types of representation and found no statistically significant evidence that the providers' offer of full (as opposed to limited) representation had a large (or any) effect on the likelihood that the occupant would retain possession, on the financial consequences of the case, on judicial involvement in or attention to cases, or on any other litigation-related outcome of substantive import.

7. Conclusion

The Limited Scope Representation Committee submits this report to the Texas Commission to Expand Civil Legal Services for its consideration. Based on further direction from the Commission, the committee stands ready to consider additional issues, refine its recommendations, and prepare further reports as needed. The committee members appreciate the opportunity to be of service to the Commission and the Court.[13]

[13] The Limited Scope Representation Committee members are Kennon L. Wooten, Chair; Hon. Jane Bland; Hon. Ann Crawford McClure; F. Scott McCown; Chris Nickelson; and Hon. Lee H. Rosenthal.

APPENDIX 1

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 15-9233

ORDER CREATING THE TEXAS COMMISSION TO EXPAND CIVIL LEGAL SERVICES

Judge Learned Hand famously observed: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." But without access to quality legal representation, Justice Antonin Scalia has noted, there is no justice.

Federal and state law provide a right to legal representation in cases where a person's liberty or other constitutional interests are at stake, such as felony criminal cases and government-initiated actions to terminate the parent-child relationship. But a person has no right to legal representation in other matters, including divorce and child custody, protection from domestic violence, eviction and foreclosure, landlord-tenant disputes, entitlements, contract disputes, probate, and elder assistance. Legal aid lawyers work tirelessly to help as many of the poor as their limited resources allow, and lawyers in the private sector donate their services to help *pro bono publico*—for the *public* good. A University of North Texas study has shown that Texas lawyers provide more than two million hours of pro bono legal services to the poor annually. Despite all these efforts, the demand for civil legal services remains overwhelming. Texas legal aid providers help more than 100,000 families each year, yet they estimate that three out of four qualified applicants are turned away for lack of resources. Studies conducted nationally or in other states project that 80-90% of low- and moderate-income Americans with civil legal problems are unable to obtain representation.

The unmet need for legal services is not limited to the very poor. The middle class, who earn too much to qualify for legal aid but not enough to afford an attorney, sometimes feel forced to try to represent themselves or forgo their rights altogether. The cost of legal services has become prohibitive for most Americans. An important factor in the cost of legal services is the rising cost of a legal education. Law students are graduating with six-figure student debt. At the same time, many new lawyers are facing limited job opportunities. In short: more than ever, people need lawyers, and lawyers need work, but the cost of legal services keeps them apart. This gulf has been called the "justice gap", and it is widening. The integrity of the justice system depends on our ability to close it. Justice for only those who can afford it is neither justice *for* all nor justice *at* all.

States, bar associations, and commentators have proposed various reforms, which the American Bar Association Commission on the Future of Legal Services has been studying. A Texas Commission to Expand Civil Legal Services is needed to study and recommend ways to close the justice gap in Texas.

It is therefore ORDERED:

The Commission to Expand Civil Legal Services is created.

The mission of the Commission is to gather information on initiatives and proposals to expand the availability of civil legal services to low- and middle-income Texans, to evaluate that information, and to recommend to the Supreme Court of Texas ways to accomplish that expansion.

The following are appointed members of the Commission:

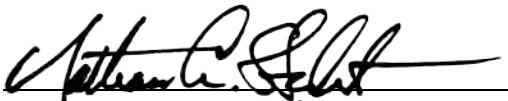
S. Jack Balagia Jr.	Dallas	Hon. Ann Crawford McClure	El Paso
Hon. Jane Bland	Houston	F. Scott McCown	Austin
Faye M. Bracey	San Antonio	Chris Nickelson	Fort Worth
Darby Dickerson	Lubbock	Harry M. Reasoner	Houston
William Royal Furgeson Jr.	Dallas	Hon. Lee H. Rosenthal	Houston
Eden Harrington	Austin	Charles W. Schwartz	Houston
Angelica Maria Hernandez	Houston	Frank E. Stevenson II	Dallas
Wallace B. Jefferson	Austin	William O. Whitehurst Jr.	Austin
Joseph C. Matta	Houston	Kennon L. Wooten	Austin

Wallace B. Jefferson is appointed Chair of the Commission.

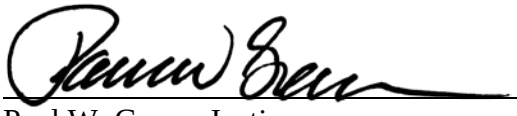
The Court's liaison to the Commission is Chief Justice Nathan L. Hecht. The Court's staff representatives are Nina Hess Hsu, general counsel; Martha Newton, rules attorney; and Osler McCarthy, staff attorney for public information. The Office of Court Administration will provide administrative assistance.

The Commission will submit its first report to the Court by November 1, 2016.

Dated: November 23, 2015

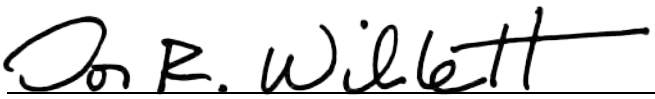


Nathan L. Hecht, Chief Justice

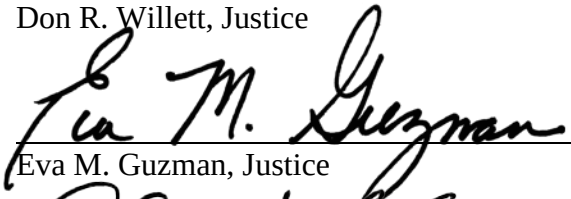


Paul W. Green, Justice

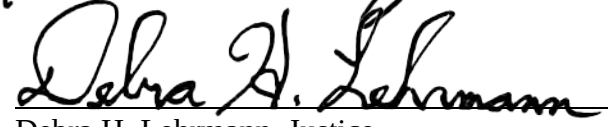
Phil Johnson, Justice



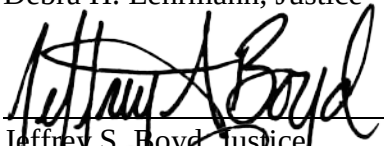
Don R. Willett, Justice



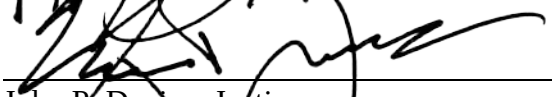
Eva M. Guzman, Justice



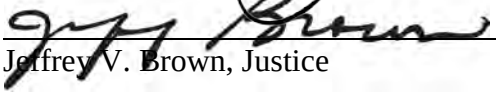
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

APPENDIX 2

Unbundling Fact Sheet

What is unbundling?

Unbundling refers to the practice of breaking legal representation into separate and distinct tasks. Think of unbundling as an a la carte option for legal services, where, instead of handling an entire case from start to finish, a lawyer may handle only certain parts. For instance, a lawyer may provide legal advice and prepare pleadings, while a client handles all other tasks in the case, including filing court documents and appearing at hearings.

Unbundling is also known as "limited scope representation," "limited scope legal assistance," "limited assistance representation" and "discrete task representation." The terms are often used interchangeably, but all refer to the same practice. It is sometimes called "limited representation," but this term misses the point: it is the scope of the representation that is limited, not the legal assistance.

Who benefits from unbundling?

Unbundling has the potential to benefit lawyers, their clients and the courts. Through unbundling, lawyers have the opportunity to obtain clients who would otherwise represent themselves; lawyers reach an untapped market and generate additional income. Unbundled legal services increase collectibles and reduce the risk of malpractice. Clients benefit from the legal expertise of lawyers, while paying only for those services that they most need. Courts also stand to benefit from unbundling: unbundling clients are often better prepared for court, saving staff time and resources compared to those who self-represent with no assistance from a lawyer.

Is unbundling ethical?

ABA Model Rule 1.2(c) governs unbundling. It states, "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

To date, 41 states have adopted the Model Rule or a substantively similar rule. Nearly twenty states have adopted rules that provide additional guidance on unbundling, addressing issues related to ghostwriting, communications with opposing parties and their counsel, limited appearances and service. To see which states have adopted Model Rule 1.2(c), or have rules that provide additional guidance, click here.

Unbundled services are not a short-cut or second-class services. Lawyers who unbundle must provide competent representation, and must follow all other ethical and procedural rules in their jurisdiction.

When is unbundling appropriate?

Unbundling is not appropriate for every case or every client. The lawyer must determine if the representation is reasonable under the circumstances, and must ensure that the client fully understands the limits of the representation.

To find out more about unbundling, check out the following ABA resources:

Pro Se/Unbundling Resource Center
Handbook on Limited Scope Legal Assistance
Unbundling Training Video and Risk Management Materials

APPENDIX 3

Limited Scope Representation

What is Limited Scope Representation?

Limited Scope Representation (LSR) is the concept of providing only specified legal services to a client, rather than handling all aspects of a client's case. This form of legal practice is also referred to as "unbundled legal services" or "unbundling." For example, in a divorce case, an attorney might agree only to draft documents, or to act only as a consultant, leaving the client responsible for all other aspects of the case.

LSR is practiced by attorneys across the country and used in a variety of practice areas. It is one solution to the growing number of pro se litigants. Clients who cannot afford full representation may be able to afford specific services.

Why is it a good thing?

The cost of legal services has risen significantly over the last several decades. Many potential clients simply believe they can no longer afford to hire a lawyer. As a result, more and more litigants are seeking to represent themselves.

- **For Lawyers.** Lawyers stand to gain from an expanded market of persons who would able to afford some legal assistance – to tap into an untapped market – and allows attorneys to focus their practice on the aspects they enjoy.
  - ✓ Example: An attorney builds a LSR practice drafting legal documents and responding to discovery, but declines court appearances.
- **For Judges.** LSR increases judicial efficiency in various ways:
  - ✓ By lowering the number of *pro se* appearances.
  - ✓ By equipping pro se litigants with better drafted documents, thus decreasing time demands on judges and staff, and increasing the enforceability of orders.
- **For Clients.** LSR reduces the cost of legal assistance, making legal services affordable for more middle- and low-income clients
  - ✓ Clients who might otherwise act *pro se* may hire counsel for specific services.
  - ✓ Provides a payment structure that allows clients to purchase legal services in small increments as opposed to a higher retainer fee
  - ✓ Example: Client cannot pay a $5,000 retainer fee, but can afford to purchase 1-2 attorney hours at a time for specific services.

Is Limited Scope Representation ethical in Texas?

Yes. LSR is specifically authorized by Texas Disciplinary Rule of Professional Conduct 1.02(b), which states, "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." As with full-scope representation, LSR must be reasonable under the circumstances, and is subject to all other ethical rules in the Texas Disciplinary Rules of Professional Conduct.

Limited Scope Representation

Is it covered by malpractice insurance?

Yes. The Texas Lawyers' Insurance Exchange has advised that there should be no problem obtaining insurance coverage for LSR. However, lawyers should verify this with their carrier. LSR does not increase the risk of malpractice claims. Across the nation, the rate of malpractice claims for LSR is statistically lower than those for full-scope representation.

What practice tips help avoid common pitfalls?

- **Client-Attorney Miscommunication.** As with full-scope representation, problems can arise when clients and attorneys have a different understanding about the representation.
  - ✓ **TIP:** Avoid this pitfall by consistently using a *written service agreement* signed by the client. Always amend the Agreement in writing when the client expands the scope of representation by requesting additional services.
- **Unrealistic client expectations.** Clients do not typically understand all aspects of their case, which leads to unrealistic expectations in the degree of difficulty of apportioned tasks, complexity of legal issues, or overall case strength.
  - ✓ **TIP:** Avoid this pitfall by discussing all aspects of the client's case, not just those included in the agreed scope of representation. Be realistic in deciding how to apportion tasks. Identify which aspects of the case should be completed by the attorney, as opposed to by the client.
  - ✓ **TIP:** Avoid this pitfall by clearly specifying the lawyer's tasks in the *written service agreement*. A carefully prepared Agreement minimizes the risk of liability associated with unrealistic client expectations.
- **Withdrawing as counsel.** If the limited scope representation constitutes a formal appearance (e.g., by signing a pleading or appearing in court), a court order may be necessary to withdraw as counsel, otherwise the scope of representation may be inadvertently expanded by the court.
  - ✓ **TIP:** Avoid this pitfall by filing a Motion to Withdraw when services are completed.
  - ✓ **TIP:** Avoid this pitfall by knowing the court's attitude toward withdrawal of counsel prior to conclusion of the entire matter. If the court is not likely to permit withdrawal, then do not accept the LSR.

What resources are available to help lawyers begin offering LSR?

- ✓ "Expanding Your Practice Using Limited Scope Representation" training session: www.pli.edu/Content.aspx?dsNav=Rpp:1,N:4294964525-167&ID=54234
- ✓ ABA Unbundling Resources website: www.americanbar.org/groups/delivery_legal_services.html
- ✓ The Lawyer Referral Service of Central Texas has a Family Law LSR panel and a variety of resources. More information available at: www.austinlrs.com/

APPENDIX 4

Adoption of ABA Model Rule of Professional Conduct 1.2(c)

Standing Committee on
The Delivery of Legal Services

STATE	RULE	ABA MODEL RULE 1.2(c)	COMMENTS
Alabama	RPC 1.2 (c)	Similar	Additionaly language regarding when informed consent must be confirmed in writing Additional language and requirements (written fee agreements for representation over $500 and also addresses communication between opposing
Alaska	RPC 1.2 (c)	Similar	attorney and otherwise unrepresented client)
Arizona	Ethics Rule 1.2	Yes	
Arkansas	RPC 1.2 (c)	Yes	
California	n/a	No	Proposed adoption of Model Rule - see proposal (Currently no counterpart in California Rules - See Civil Rules 3.35-3.37 and Family & Juvenile Rules 5.70-5.71 for rules that permit limited scope representation)
Colorado	RPC 1.2 (c)	Similar	Additional language referring to rules of civil procedure - explicitly permits limited representation
Connecticut	RPC 1.2 (c)	Similar	Additional language referring to consent when attorney retained by third party; comment addresses limited appearances
Delaware	RPC 1.2 (c)	Yes	
District of Columbia	RPC 1.2 (c)	Similar	Omits "reasonable under the circumstances"; encourages consent in writing
Florida	RPC 4-1.2 (c)	Similar	Additional language and requirements referring to written consent (required) and communication; comment addresses document preparation
Georgia	RPC 1.2 (c)	Yes	
Hawaii	RPC 1.2 (c)	Similar	Omits "reasonable under the circumstances"; adds consultation
Idaho	RPC 1.2 (c)	Yes	Comment [8] encourages consent in writing
Illinois	RPC 1.2 (c)	Yes	
Indiana	RPC 1.2 (c)	Yes	
Iowa	RPC 32:1.2	Similar	Additional language and requirements - outlines requirements for consent and clarifies limitation of lawyer's service
Kansas	RPC 1.2 (c)	Yes	
Kentucky	RPC 1.2 (c)	Yes	
Louisiana	RPC 1.2 (c)	Yes	
Maine	RPC 1.2(c)	Similar	Additional language and requirements referring to limited appearances; also includes sample consent form - Change from Bar Rules to RPC 08/09
Maryland	RPC 1.2 (c)	Yes	
Massachusetts	RPC 1.2 (c)	Similar	Omits "reasonable under the circumstances"; adds consultation
Michigan	RPC 1.2(c)	Similar	Omits "reasonable under the circumstances"; adds consultation
Minnesota	RPC 1.2 (c)	Yes	
Mississippi	RPC 1.2 (c)	Yes	Adds "objectives or"
Missouri	RPC 4-1.2	Similar	Additional language and requirements (consent must be in writing); also includes sample agreement form - omits "reasonable under the circumstances"
Montana	RPC 1.2 (c)	Similar	Requires that the informed consent be in writing except for specific situations, as indicated in the rule
Nebraska	RPC 501.2(b)	Similar	Additional language referring to lawyer's judgment; additional requirements in 1.2(c) -(e) related to document prep, limited appearances
Nevada	RPC 1.2 (c)	Yes	
New Hampshire	RPC 1.2 (c)	Similar	Additional language and requirements referring to lawyer's responsibility to client, court, etc ;
New Jersey	RPC 1.2 (c)	Yes	
New Mexico	RPC 16-102(C)	Yes	
New York	RPC 1.2 (c)	Similar	Additional language and requirements (notification of tribunal and opposing counsel when required)
North Carolina	RPC 1.2 (c)	Similar	Omits "and the client gives informed consent"; comment [8] encourages written consent
North Dakota	RPC 1.2 (c)	Similar	Omits "reasonable under the circumstances"; adds consultation
Ohio	RPC 1.2 (c)	Similar	Additional language (preference for written consent); see comment [7a] - omits "and the client gives informed consent"
Oklahoma	RPC 1.2 (c)	Yes	
Oregon	RPC 1.2 (b)	Yes	
Pennsylvania	RPC 1.2 (c)	Yes	
Rhode Island	RPC 1.2 (c)	Yes	
South Carolina	RPC 1.2 (c)	Yes	
South Dakota	RPC 1.2 (c)	Yes	
Tennessee	RPC 1.2 (c)	Yes	Adds "preferably in writing"
Texas	RPC 1.02 (b)	Similar	Omits "reasonable under the circumstances"; adds consultation
Utah	RPC 1.2 (c)	Yes	
Vermont	RPC 1.2 (c)	Yes	
Virginia	RPC 1.2 (b)	Similar	Omits "reasonable under the circumstances"; adds consultation
Washington	RPC 1.2 (c)	Yes	
West Virginia	RPC 1.2 (c)	Yes	Omits "reasonable under the circumstances"; adds consultation
Wisconsin	RPC 1.2 (c)	Yes	
Wyoming	RPC 1.2 (c)	Similar	Additional language and requirements (written consent unless solely represented through phone communication); also includes sample consent form

APPENDIX 5

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Table of Contents

Rule 1.02. Scope and Objectives of Representation

(a) Subject to paragraphs (b), (c), (d), and (e), (f), and (g), a lawyer shall abide by a client's decisions:

(1) concerning the objectives and general methods of representation;

(2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

(3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the

circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.

Comment:

Scope of Representation

1. Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the objectives to be served by legal representation, within the limits imposed by law, the lawyer's professional obligations, and the agreed scope of representation. Within those limits, a client also has a right to consult with the lawyer about the general methods to be used in pursuing those objectives. The lawyer should assume responsibility for the means by which the client's objectives are best achieved. Thus, a lawyer has very broad discretion to determine technical and legal tactics, subject to the client's wishes regarding such matters as the expense to be incurred and concern for third persons who might be adversely affected.

2. Except where prior communications have made it clear that a particular proposal would be unacceptable to the client, a lawyer is obligated to communicate any settlement offer to the client in a civil case; and a lawyer has a comparable responsibility with respect to a proposed plea bargain in a criminal case.

3. A lawyer should consult with the client concerning any such proposal, and generally it is for the client to decide whether or not to accept it. This principle is subject to several exceptions or qualifications. First, in class actions a lawyer may recommend a settlement of the matter to the court over the objections of named plaintiffs in the case. Second, in insurance defense cases a lawyer's ability to implement an insured client's wishes with respect to settlement may be qualified by the contractual rights of the insurer under its policy. Finally, a lawyer's normal deference to a client's wishes concerning settlement may be abrogated if the client has validly relinquished to a third party any rights to pass upon settlement offers. Whether any such waiver is enforceable is a question largely beyond the scope of these rules. But see comment 5 below. A lawyer reasonably relying on any of these exceptions in not implementing a client's desires concerning settlement is, however, not subject to discipline under this Rule.

Limited Scope of Representation

4. The scope of representation provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined objective. Likewise, representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. Similarly, when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The scope within which the representation is undertaken also may exclude specific objectives or means, such as those that the lawyer or client regards as repugnant or imprudent.

5. An agreement concerning the scope of representation must accord with the Disciplinary Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.01, or to surrender the right to terminate the lawyer's services or the right to settle or continue litigation that the lawyer might wish to handle differently.

6. Unless the representation is terminated as provided in Rule 1.15, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Criminal, Fraudulent and Prohibited Transactions

7. A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

8. When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer may not reveal the client's wrongdoing, except as permitted or required by Rule 1.05. However, the lawyer also must avoid furthering the client's unlawful purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. See Rule 1.15(a)(1).

9. Paragraph (c) is violated when a lawyer accepts a general retainer for legal services to an enterprise known to be unlawful. Paragraph (c) does not, however, preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise.

10. The last clause of paragraph (c) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

11. Paragraph (d) requires a lawyer in certain instances to use reasonable efforts to dissuade a client from committing a crime or fraud. If the services of the lawyer were used by the client in committing a crime or fraud, paragraph (e) requires the lawyer to use reasonable efforts to persuade the client to take corrective action.

Client Under a Disability

12. Paragraph (a) assumes that the lawyer is legally authorized to represent the client. The usual attorney-client relationship is established and maintained by consenting adults who possess the legal capacity to agree to the relationship. Sometimes the relationship can be established only by a legally effective appointment of the lawyer to represent a person. Unless the lawyer is legally authorized to act for a person under a disability, an attorney-client relationship does not exist for the purpose of this rule.

13. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, paragraph (g) requires a lawyer in some situations to take protective steps, such as initiating the appointment of a guardian. The lawyer should see to such appointment or take other protective steps when it reasonably appears advisable to do so in order to serve the client's best interests. See Rule 1.05(c)(4), d(1) and (d)(2)(i) in regard to the lawyer's right to reveal to the court the facts reasonably necessary to secure the guardianship or other protective order.

APPENDIX 6

Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer

Client-Lawyer Relationship

Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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Comment on Rule 1.2

Client-Lawyer Relationship
Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer - Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a

lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

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APPENDIX 7

Rule 6.5: Nonprofit & Court-Annexed Limited Legal Services Programs

Public Service

Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

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Comment on Rule 6.5

Public Service

Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs - Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a).

By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

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APPENDIX 8

LOCAL RULES

OF

CIVIL PROCEDURE

AND

RULES OF DECORUM

The District Courts of Travis County, Texas

Effective June 2, 2014

FILE NUMBER D-1-GN-61-121012

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9081

APPROVAL OF AMENDED LOCAL RULES FOR DISTRICT COURTS OF TRAVIS COUNTY

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following amendments to the local rules for the District Courts of Travis County.

Dated: April 14th 2014.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

CHAPTER 20

LIMITED APPEARANCE, WITHDRAWAL, & SUBSTITUTION

Consistent with Texas Disciplinary Rule of Professional Conduct 1.02(b), an attorney may limit the scope, objectives and general methods of representation if the client consents after consultation. This rule addresses the responsibilities to the court of an attorney who wishes to make a limited appearance in court. It also addresses the responsibilities of opposing counsel regarding service.

20.1 Scope of Limitation

An attorney who files a Notice of Limited Appearance has no responsibility to the Court for any matter outside the scope of the Notice except as provided in this rule.

20.2 Notice of Limited Appearance

An Attorney making a limited appearance shall file a Notice of Limited Appearance. The Notice shall state the hearing to which the limited appearance pertains, and, if the appearance does not extend to all issues to be considered at the hearing, the Notice shall identify the discrete issues covered by the appearance. An Attorney may file a Notice of Limited Appearance for more than one hearing in a case.

20.3 Ruling and Order

If, pursuant to a Notice of Limited Appearance, an attorney appears at a hearing, the attorney's obligation to the court continues on the matters within the scope of the Notice of Limited Appearance until an order is filed that rules on those matters, except as follows. If the hearing was on a preliminary or temporary issue and the Court defers its ruling until final hearing, the attorney's obligation to the court ends with the hearing at which the attorney appeared.

The fact that an order is subject to review by the trial court at a later date does not extend the attorney's obligation to the court.

20.4 Responsibilities of Opposing Counsel regarding service

Whenever service is required or permitted to be made upon a party represented by an attorney who has filed a Notice of Limited Appearance, service regarding matters outside the scope of the Notice of Limited Appearance must be made on the party. Any notice upon an attorney regarding matters outside the scope of the Notice of Limited Appearance is not effective notice on that party. Service upon a party shall be at the address listed for the party in the Notice of Limited Appearance.

20.5 Withdrawal & Substitution

A motion to withdraw from representation or from a limited appearance must be presented at a hearing after notice to the client and to all other parties *unless* the moving attorney:

(a) files written consent to the withdrawal signed by all other parties;

(b) files a written consent to the withdrawal signed by the client;

(d) files a certificate stating the last known mailing address of the client; and

(e) files a certificate stating that he or she has completed all the tasks required by a Notice of Limited Appearance, if any, including obtaining a ruling and filing an order on any matter presented.

If a motion to withdraw and to substitute another attorney includes an appearance by another attorney pursuant to the Texas Rules of Civil Procedure, that appearance will satisfy the requirements of subparagraphs (b) and (c) above but will not satisfy the requirement of subparagraph (a).

If an attorney is substituting in a limited appearance, the certificate required by paragraph (d) must state that the substituting attorney has assumed responsibility for all uncompleted matters within the scope of the Notice of Limited Appearance, and it must be signed by both the withdrawing and the substituting attorney.

Even if all parties and counsel agree to a motion to withdraw, the Court retains discretion to determine, but only to determine, whether the attorney has fulfilled the attorney's responsibilities to the Court pursuant to the Notice of Limited Appearance and this rule and whether any substituting attorney has assumed any remaining responsibilities.

APPENDIX 9

Chart Summarizing Limited Scope Representation (LSR) Provisions on a State-by-State Basis
(Prepared with Information Collected in July 2016)

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
AL[1]	RUC + IC + WR[2] (with exceptions)	Yes	Ala. R. Civ. P. 87.	May rely on client unless reason to believe otherwise.	Must receive written notice of LSR.	Must indicate lawyer assistance but not name of lawyer.
AK	RUC + CAC	Yes	Ark. R. Civ. P. 64(b).		Must receive written notice of LSR.	
AZ	RUC + IC	Yes	Ariz. R. Civ. P. 5.1, 5.2, Ariz. R. Fam. Law P. 9.	Reasonable inquiry required.	Must have knowledge of LSR and identity of lawyer providing LSR.	No
AR	RUC + IC	Yes				
CA	N/A	Yes*	Cal. Rules of Court, 3.35–3.37.			No
CO	RUC + IC	Yes	Colo. R. Civ. P. 121, Colo. App. R. 5.	Reasonable inquiry of the client required, plus independent reasonable inquiry if reason to believe false or materially insufficient.	Must have knowledge of LSR.	Yes
CT	RUC + IC	Yes	Conn. Rule of Professional Conduct 1.16.		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	
DC	IC	Yes	Administrative Order 14-10, Sup. Ct. of D.C. (June 16, 2014).			
DE	RUC + IC	Yes				
FL	RUC + IC + WR	No	Fla. Fam. L.R.P. Rule 12.040.		Must have knowledge or notice of LSR with time	

[1] The state abbreviations in this chart follow the USPS official mailing abbreviations for the states.

[2] For ease of reference, the following abbreviations are used in this chart: (a) "RUC" = LSR allowed when reasonable under the circumstances; (b) "IC" = LSR allowed with the client's informed consent; (c) "CAC" = LSR allowed with the client's consent after consultation; and (d) "WR" = a written agreement regarding LSR is required.

*This state has adopted a version of the ABA Model Rule 6.5 but adapted it to fit the state's numbering system or specific ethical-rule scheme.

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
					period and subject matter, limited to subject matter of LSR.	
GA	RUC + IC	No				
HI	CAC	Yes				
ID	RUC + IC	Yes	Idaho R. Civ. P. 11(b)(5).			
IL	RUC + IC	Yes	Ill. Sup. Ct. R. 11, 13.	May rely on client's representation of facts without further investigation unless knowledge that representations are false.		No
IN	RUC + IC	Yes	Ind. Trial Rule 3.1(I).			
IA	RUC + IC + WR (with exceptions)	Yes	I.C.A. Rule 1.404, 1.423(3), 1.442(2).	May rely on client's representation of facts unless reason to believe representation is false or materially insufficient, in which case reasonable inquiry required.	Must have knowledge or be provided with notice of time period and subject matter within LSR.	Yes
KS	RUC + IC + WR	No	Kan. Sup. Ct. R. 115A.			Must indicate lawyer assistance but not name of lawyer.
KY	RUC + IC	Yes				
LA	RUC + IC	Yes	La. Dist. Ct. R. 9.12, 9.13.			
ME	RUC + IC + CAC	Yes	Me. R. Civ. P. 11(b), 89(a).	May reasonably rely on information provided by the client.	Must receive written notice of a time period within which only the LSR attorney should be contacted.	
MD	RUC + IC	Yes				
MA	CAC (Ethical rules), RUC + IC (Supreme	Yes*	In flux. But see: Massachusetts Standing			Must indicate lawyer assistance but not name of

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	Judicial Court Order)		Orders of the Supreme Judicial Court, *In Re: Limited Assistance Representation* (2016).			lawyer.
MI	CAC	Yes				
MN	RUC + IC	Yes				
MS	RUC + IC	Yes				
MO	IC + WR (with exceptions)	Yes	V.A.M.R. 55.03(c), (e).		Must receive written notice of time period of LSR.	No
MT	RUC + IC + WR (with exceptions)	Yes	Mont. R. Civ. P. 4.2.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case independent reasonable inquiry required.	Must receive written notice of time period and subject matter of LSR.	No
NE	RUC + IC	Yes	Neb. Ct. R. of Prof. Cond. § 3-501.2(e).		No requirement; treat as unrepresented re anything other than the subject matter of LSR.	Yes
NV	RUC + IC	Yes	Nev. St. 8 Dist. Ct. R. 5.28 (Local rule for 8th Judicial District).			
NH	RUC + IC	Yes	N.H. Sup. Ct. Civ. R. 3, 17.		Must receive written notice of the time period in which opposing counsel shall communicate only with LSR lawyer.	No
NJ	RUC + IC	Yes				
NM	RUC + IC	Yes*	N.M. Dist. Ct. R. Civ. P. 1-089, N.M. Mag. Ct. R. Civ. P. 2-107, 2-108.			
NY	RUC + IC + Notice	Yes*				

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
	to tribunal and/or opposing counsel where necessary					
NC	RUC	Yes				
ND	CAC	Yes	N.D.R. Civ. P. 11(e), N.D.R. Ct. 11.2(d).			
OH	RUC + communicated to client, "preferably" in writing	Yes				
OK	RUC + IC	Yes				
OR	RUC + IC	Yes				
PA	RUC + IC	Yes				
RI	RUC + IC	Yes				
SC	RUC + IC	Yes				
SD	RUC + IC	Yes				
TN	RUC + IC, "preferably" in writing	Yes	Tenn. R. Civ. P. 5.02, 11.01.			
TX	CAC	No				
UT	RUC + IC	Yes	Utah R. Civ. P. 74, 75.		Must receive written notice of the time and subject limitations of representation.	
VT	RUC + IC	Yes	Vt. R. Civ. P. 79.1(h), Vt. R. Fam. P. 15(h).			
VA	CAC	Yes				
WA	RUC + IC	Yes	Wa. Super. Ct. Civ. R. 4.2, 11, 70.1.	Attorney may rely on self-represented person's facts (after reasonable inquiry) unless reason to believe representations are false or materially	Must have knowledge or written notice of time and subject matter limitation of LSR.	

State	What is required by the ethics rule that is comparable to ABA Model Rule 1.2(c)?	Has the state adopted ABA Model Rule 6.5 in some form?	Which additional state rules or statutes address LSR requirements (e.g., notice, disclosure, withdrawal, etc.)?	What is the burden for fact checking pleadings when providing LSR?	When must an opposing lawyer seek consent from the LSR lawyer to communicate with the client?	Must a lawyer providing LSR disclose the lawyer's drafting assistance on court documents?
				insufficient, in which case attorney must make independent reasonable inquiry.		
WV	CAC	No				
WI	RUC + IC + WR (with exceptions)	Yes*	Wis. Stat. § 802.045.	May rely on client's representations unless reason to believe representations are false or materially insufficient, in which case attorney must make independent reasonable inquiry.	Must receive notification from LSR lawyer.	Must indicate lawyer assistance but not name of lawyer.
WY	RUC + IC (or Rule 6.5) + WR (unless phone consultation only)	Yes	Wyo. Unif. R. Dist. Cts. 102.			

Limited Scope Representation
Attorney Tool Kit

The purpose of this Limited Scope Representation Attorney Tool Kit is to assist attorneys in integrating Limited Scope Representation into their practice. The following forms are included:

- Sample Limited Scope Representation Agreement – Family Law,
- Sample Limited Scope Representation Task Assignment Checklist – Family Law
- Sample Issue Checklist – Family Law,
- Sample Notice of Limited Appearance, and
- Sample Motion to Withdraw.

These forms are presented as adaptable Word documents so that attorneys can modify each document to best fit their needs. They are intended to be templates from which a Limited Scope Representation practice can be established.

The Agreement, Task Assignment Checklist, and Issue Checklist should be used together to form a cohesive and comprehensive understanding between the attorney and client as to what issues will be covered during the representation and who will perform the necessary tasks. The attorney and client should sign and date all the documents to show their understanding as to the issues and tasks the representation entails.

The **Representation Agreement** is geared towards either family or general civil law. It consolidates the Issue Checklist with the Task Assignment Checklist into a contract for services. The Task Assignment Checklist should be attached as a binding component of the agreement.

The **Task Assignment Checklist** is geared towards either family or general civil law. It serves as an outline and agreement for which portions of the case will be handled by the attorney and which will be handled by the client. It is a necessary component of the Representation Agreement and is referenced several times in that document.

The **Issue Checklist** is geared towards either family or general civil law. It outlines several general issue areas that should be covered during an initial interview with a client. It serves as a reminder to both the attorney and client to what was discussed during the meeting and what issues will be covered in the representation. It includes a section on "coaching" options – areas in which the attorney advises the client on how to represent him/herself.

The **Notice of Limited Appearance** is a general document that should be used if the attorney and client agree in the Task Assignment Checklist and Representation Agreement that the attorney will become "of record" for some portion of the case.

The **Motion to Withdraw** is a general document that should be used when the portion of the case the attorney became "of record" has concluded.

LIMITED SCOPE REPRESENTATION AGREEMENT

FAMILY LAW

Identification of Parties: This agreement is made between Attorney, _____ and Client, _____. Both parties signed two original versions and each party received a signed original.

1. **Nature of Case.** Client requests services from Attorney in the type of case listed below:

   [___] DIVORCE

   [___] CONSERVATORSHIP, POSSESSION AND/OR SUPPORT (W/O DIVORCE)

   [___] MODIFICATION

   [___] ENFORCEMENT

   [___] PARENTAGE

   [___] TERMINATION

   [___] ADOPTION

2. **Client Responsibilities and Control.** Client will handle all parts of the case except those that are assigned to Attorney. Client will be in control of the case and will be responsible for all decisions made during the case.

   Client agrees to:

   a. Cooperate with Attorney and Attorney's staff by giving them all information they reasonably request about the case.

   b. Tell Attorney anything s/he knows about the case, including any concerns s/he has about the case, and to update Attorney as new information or concerns occur.

   c. Provide Attorney with copies of all court documents and other written materials that the Client receives or sends out about the case.

   d. Immediately provide Attorney with any new court documents, including pleadings or motions, received from the other party.

   e. Keep all documents related to the case together and organized in a file for Attorney to review as needed.

3. **Attorney Responsibilities.**

   a. Assigned Services. Client and Attorney have completed the Task Assignment Checklist attached to this document. Attorney is responsible for completing the services marked "Yes" in the "Attorney To Do" column. Client is responsible for completing the services marked "Yes" in the "Client To Do" column. If someone other than Attorney or Client is responsible for completing a

service, “Other” will be written to the right of the “Client To Do” column. Client is also responsible for any service not assigned specifically to Attorney or “Other”.

Limitation of Issues. Attorney is responsible for **only** the following issues:

_____

_____

_____

b. Unassigned Services and Limited Issues.

- **ATTORNEY IS RESPONSIBLE FOR ONLY THE SERVICES UNDER THE “ATTORNEY TO DO” COLUMN OF THE ATTACHED TASK ASSIGNMENT CHECKLIST AND THE ISSUES LISTED IN THE “LIMITATION OF ISSUES” PARAGRAPH ABOVE.**
- Client is responsible for any service not assigned specifically to Attorney or “Other”.

c. Additional Services. Client may request that Attorney provide additional services. If Attorney and Client agree that Attorney will perform other services or work on other issues, those changes must be dated and initialed by both Attorney and Client on the attached Task Assignment Checklist. Attorney will be responsible for the additional services on the date that both Attorney and Client initial the change. If Client decides to retain Attorney to handle Client’s entire case, Client and Attorney will sign a new written Agreement that outlines Attorney’s additional responsibilities in Client’s case. Client will pay additional fees for additional services.

d. Right to Seek Advice of Other Counsel: Client has the right to ask another attorney for advice and professional services at any time during or following this Agreement.

e. No Guarantees. Client states Attorney has not made any promises or guarantees that his/her involvement in the case will cause a certain outcome or result.

Attorney cannot guarantee the case will be successful. Client states that 1) Attorney has not promised or guaranteed an outcome, 2) Attorney has not promised or guaranteed how long the case will take to resolve, and 3) Attorney may give his/her opinion about how the case may end, but those statements are just opinion, not a promise or guarantee.

f. No Settlement without Client’s Consent. Attorney will not settle Client’s case without Client’s consent.

4. Attorney of Record. Attorney and Client intend that Attorney will only perform the services assigned to Attorney. If the service requires Attorney to become attorney of record or make a Court appearance, Attorney is only responsible for the assigned services. If the Court requires Attorney to be responsible for other services or issues that Attorney and Client did not agree to, Attorney may withdraw as Client’s attorney. If Attorney withdraws as Client’s attorney, Client will file any Substitution of Attorney forms Attorney reasonably requests. If Attorney accepts the additional services the Court orders, Client shall pay Attorney additional fees for those services. The hourly pay rate is listed below in paragraph 5.

5. Method of Payment for Services:

a. Hourly Fee

Attorney charges the following hourly fee:

1) Attorney $_____

2) Associate $_____

3) Paralegal $_____

4) Law Clerk $_____

The hourly fee is payable at the time of the service unless agreed to by Attorney and Client in paragraph 5b below. Attorney's charges will be based on one-tenth of an hour (six minutes) with rounding to the nearest one-tenth.

b. Payment from Deposit. Client will pay to Attorney a deposit of $_____, which must be paid to Attorney on or before _____. Attorney will deposit this money in his/her trust account. Attorney will perform services based on the hourly rate listed above in paragraph 5a. Client authorizes Attorney to deduct payment from this deposit when services are performed.

Interest earned by the deposit will be paid to the Texas Access to Justice Foundation, as required by law, to fund legal services for low income individuals. When Attorney completes all the assigned tasks, if there is money left from the deposit, Client will receive a refund.

c. Costs. Client will pay Attorney's out-of-pocket costs. These include long distance fees, copying, and postage. Client will directly pay costs to third parties. These include filing fees, investigation fees, deposition fees, etc. Attorney will not advance costs to third parties on Client's behalf.

d. No Guarantees as to Fees and Costs. **Client states that Attorney has not promised how much the total costs and fees would be for Client's case**. **At this time, Attorney is unable to estimate the cost of legal fees. As the case develops, Attorney will discuss with Client how much he/she estimates the legal fees will be if Client wishes.**

6. Discharge of Attorney: Client may fire Attorney at any time. Client must give Attorney written notice. The termination is effective when Attorney receives the written notice. Unless Attorney and Client agree, Attorney will provide no further services after he/she receives the termination notice. Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the termination.

7. Withdrawal of Attorney: Attorney's obligation to Client is over once he/she completes all the services listed on the attached Task Assignment Checklist. If Attorney became Attorney of Record, he/she shall withdraw from the case.

In addition, Attorney may withdraw at any time as permitted under the Texas Disciplinary Rules of Professional Conduct. The Rules allow an attorney to withdraw for several reasons, including: a) Client consents, b) Client's conduct makes it unreasonably difficult for Attorney to effectively work, or c) Client fails to pay Attorney's fees or costs as required by this Agreement.

Even if Attorney withdraws, Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the withdrawal.

Release of Client's Papers and Property. Once all of Attorney's services are performed, if Client requests Client's papers and property be returned, Attorney will release all of Client's papers and property to Client within a reasonable period of time. If Client does not make this request, then Attorney may dispose of the papers and property after three years following completion of services.

8. Resolving Disputes between Client and Attorney

a. Notice and Negotiation. If Attorney or Client has any disputes, they will inform the other in writing. Both Attorney and Client agree to meet within ten (10) days of the written notice to negotiate a solution.

b. Mediation. If Attorney and Client cannot reach an agreement during negotiation, Attorney and Client shall attempt to agree on a neutral mediator within fifteen (15) days of the failed negotiation. If Attorney and Client cannot agree on a neutral mediator, they shall request that _____ select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. Attorney and Client shall share the costs of the mediation, but paying costs and attorney's fees may be part of the mediation. Client does not waive his/her rights to a trial *de novo* (a new trial) by agreeing to this mediation.

9. Amendments and Additional Services. This written Agreement and attached Task Assignment Checklist outline all the rights and responsibilities of Attorney and Client. All amendments shall be in writing and made part of this Agreement.

10. Severability in Event of Partial Invalidity: Even if part of this Agreement is found to be unenforceable for any reason, the rest of the Agreement will remain in effect.

11. Applicable Law and Forum. This Agreement shall be understood under the laws of the State of Texas and the parties shall complete their assignments in _____ County, Texas. The Agreement shall bind the parties and their legal representatives, including heirs, executors, administrators, successors, and assigns.

12. Attorney has informed Client that the case may involve tax issues. Attorney is not a tax expert and cannot give tax advice. Client may ask a tax expert for advice on any tax issue.

13. Any agreement Attorney and Client had before this Agreement is cancelled. All changes to this Agreement must be in writing, dated, and signed or initialed by both Attorney and Client. Even if Attorney or Client do not enforce this Agreement or do not require the other to fulfill his/her obligation, the Agreement is not invalid or waived.

14. I have carefully read this Agreement and understand all of its provisions. I show I agree with the following statements by initialing each one:

a. [___] I have accurately described the nature of my case in Paragraph 1.

b. [___] I am responsible for my case and will be in control of my case at all times as described in Paragraph 2.

c. [___] The services that I want Attorney to perform in my case are identified by the word "YES" in the "Attorney To Do" column of the attached Task Assignment Checklist. I take responsibility for all other aspects of my case, both those services assigned to me under the "Client To Do" column of the "Attorney/Client Assignment Attachment for General Civil Law Service Agreement" and those not assigned to anyone.

d. [___] I understand and accept the limitations on the scope of Attorney's responsibilities identified in Paragraph 4 and understand that Attorney will not be responsible for my conduct in handling my own case.

e. [___] I will pay Attorney for services as described in Paragraph 5.

f. [___] I will resolve any disputes I may have with Attorney under this Agreement in the manner described in Paragraph 8.

g. [___] I understand that any amendments to this Agreement will be in writing, as described in Paragraph 9.

h. [___] I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client *before* I sign this Agreement.

NOTICE TO CLIENTS

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with an attorney involves professional misconduct, the State Bar Office of the General Counsel will provide you with information about how to file a complaint.

For more information, please call 1-800-932-1900. This is a toll-free call.

CLIENT SIGNATURE _____ **DATED:** _____/_____/_____

ATTORNEY SIGNATURE _____ **DATED:** _____/_____/_____

Task Assignment Checklist for
Family Law Service Agreement

SERVICES TO BE PERFORMED:	ATTORNEY TO DO	DATE	CLIENT TO DO
Initial consultation and review of documents provided by Client (list documents):		___/___/_____	N/A
Advice about legal rights, responsibilities, procedures and strategy relevant to issues identified by Client (list issues)		___/___/_____	N/A
Draft initial court documents (describe):		___/___/_____	
Review and edit Court documents prepared by Client (describe):			N/A
File and serve papers (list):		___/___/_____	
Advice about fact-gathering and discovery		___/___/_____	N/A
Factual investigation: contacting witnesses and/or expert witnesses, obtaining documents, public record searches (describe):		___/___/_____	
*Draft discovery requests or responses (describe): *"Discovery" is a legal term that describes tools used to uncover information from other parties.		___/___/_____	
Review and edit discovery requests or responses prepared by Client (describe):		___/___/_____	N/A
**Take or defend depositions (specify): **A "deposition" is a witness's out-of –court testimony.		___/___/_____	
Review and analyze depositions and documents (specify):		___/___/_____	

Preparation of child support-guideline calculations		___/___/_____	
Draft correspondence		___/___/_____	
Review and edit correspondence prepared by Client		___/___/_____	**N/A**
Legal research (list issues):		___/___/_____	
Advice about settlement proposals		___/___/_____	**N/A**
Draft settlement proposal		___/___/_____	
Review and edit settlement proposal prepared by Client		___/___/_____	**N/A**
Review of settlement proposal submitted by opposing party, and advice regarding same			**N/A**
Advice about negotiation and alternative dispute resolution		___/___/_____	**N/A**
Negotiation of specified issues (list):		___/___/_____	
Mediation of specified issues (list):		___/___/_____	
Advice about conducting a hearing and presenting evidence			**N/A**
Prepare subpoenas		___/___/_____	
Review and edit subpoenas prepared by Client		___/___/_____	**N/A**
Outline witness testimony and/or argument (specify)		___/___/_____	
Trial of specified issues (list):			
Advice about orders and judgments		___/___/_____	**N/A**
Draft orders and judgments (describe):		___/___/_____	
Review and edit orders and judgments prepared by Client and/or opposing party		___/___/_____	**N/A**
Advice about other documents (QDRO, W/W Order, etc.) (describe):		___/___/_____	**N/A**
Draft other documents (describe):		___/___/_____	
Review and edit other documents prepared by Client and/or opposing party(describe):		___/___/_____	**N/A**

Other (describe):		___/___/_____	
Other (describe):		___/___/_____	
Other (describe):		___/___/_____	
Advice about appeal		___/___/_____	**N/A**

CLIENT SIGNATURE _____ DATED: _____/_____/_____

ATTORNEY SIGNATURE _____ DATED: _____/_____/_____

Initial Interview Checklist of Issues – Family Law

I met with _____ on _____, 20_____

regarding _____

I performed a conflicts check on: _____

We discussed the following issues:

PROTECTIVE ORDERS: _____

PARENT-CHILD ISSUES:

Custody_____

Specific Parental Right and Duties_____

Visitation_____

Child Support_____

Medical Child Support _____

Temporary Orders_____

Wage Withholding_____

Life Insurance to Cover Child Support_____

Collection of past due support_____

Move Away_____

PROPERTY AND RELATED ISSUES:

Spousal Support (Amount/Duration) _____

Medical Insurance—COBRA Rights_____

Separate Property Claims—Client_____

Separate Property Claims—Spouse _____

Vehicles_____

Bank Accounts_____

Retirement Benefits--Emloyer_____

Retirement Benefits--Private_____

Personal Property_____

_____

Real property—Valuation and Division_____

_____

Life Insurance_____

Stocks and bonds_____

Business Interests_____

Stock options_____

Other: _____

_____

Liabilities_____

Name change_____

We discussed the pros and cons of Limited Scope Representation:_____

Advised of right to seek counsel on issues outside of the scope: _____

We discussed the following coaching options: _____

_____

_____

_____

Client's initials: _____ Date:_____

Attorney's initials: _____ Date:_____

[CAPTION]

Notice of Limited Appearance

The undersigned Attorney and Party have executed a written agreement whereby the Attorney will provide limited representation to the Party.

The Attorney's appearance in this matter is limited to the following hearing(s) on the following issue(s):

Date of Hearing(s) (if known):_____
Issue(s) to be Heard:_____
_____

Upon termination of representation indicated above, the Attorney will file a Motion for Withdrawal of Limited Appearance in this Court, and serve a copy upon the party and opposing counsel and/or party.

The Attorney named above is "Attorney of Record" and available for service of documents only for the hearing(s) and issue(s) as described above. For all other matters, the party must be served directly at the address shown below.

_____
Signature of Party Type or print Name of Party

_____
Address (*for the purpose of service*)

_____ _____
Party's Telephone Number Date

****

I certify that I have this day served the foregoing Notice of Limited Appearance on all counsel and all parties not represented by counsel.

_____
Signature of Attorney Type or Print Name of Attorney

_____
Attorney's Address

_____ _____
Attorney's Telephone Number Date

_____
State Bar No.

[CAPTION]

Motion for Withdrawal of Limited Appearance

The undersigned Attorney hereby moves the Court to permit Withdrawal of Limited Appearance as Attorney for [name and designation of party] _____ _____ in the above action.

The undersigned attorney hereby certifies that s/he has performed all tasks required under the Limited Representation Agreement with the Client and under all applicable rules of Court.

Said Attorney has knowledge of the following settings and deadlines in this case:

_____

_____

I certify that I have this day served a copy of this Notice of Withdrawal on the aforesaid party and upon all counsel and all parties not represented by counsel.

Date _____

_____

Signature of Attorney Type or Print Name

_____

Address

_____ _____

Attorney's Telephone Number State Bar No.

The undersigned party acknowledges that Attorney has completed all tasks required under the Limited Representation Agreement.

I acknowledge receipt of the foregoing Notice of Withdrawal.

_____

Signature of Party Type or Print Name of Party

_____

Address (*for the purpose of service):*

_____ _____

Party's Telephone Number Date

Limited Scope Representation
Attorney Tool Kit

The purpose of this Limited Scope Representation Attorney Tool Kit is to assist attorneys in integrating Limited Scope Representation into their practice. The following forms are included:

- Sample Limited Scope Representation Agreement –General Civil Law,
- Sample Limited Scope Representation Task Assignment Checklist –General Civil Law
- Sample Issue Checklist – General Civil Law,
- Sample Notice of Limited Appearance, and
- Sample Motion to Withdraw.

These forms are presented as adaptable Word documents so that attorneys can modify each document to best fit their needs. They are intended to be templates from which a Limited Scope Representation practice can be established.

The Agreement, Task Assignment Checklist, and Issue Checklist should be used together to form a cohesive and comprehensive understanding between the attorney and client as to what issues will be covered during the representation and who will perform the necessary tasks. The attorney and client should sign and date all the documents to show their understanding as to the issues and tasks the representation entails.

The **Representation Agreement** is geared towards either family or general civil law. It consolidates the Issue Checklist with the Task Assignment Checklist into a contract for services. The Task Assignment Checklist should be attached as a binding component of the agreement.

The **Task Assignment Checklist** is geared towards either family or general civil law. It serves as an outline and agreement for which portions of the case will be handled by the attorney and which will be handled by the client. It is a necessary component of the Representation Agreement and is referenced several times in that document.

The **Issue Checklist** is geared towards either family or general civil law. It outlines several general issue areas that should be covered during an initial interview with a client. It serves as a reminder to both the attorney and client to what was discussed during the meeting and what issues will be covered in the representation. It includes a section on “coaching” options – areas in which the attorney advises the client on how to represent him/herself.

The **Notice of Limited Appearance** is a general document that should be used if the attorney and client agree in the Task Assignment Checklist and Representation Agreement that the attorney will become “of record” for some portion of the case.

The **Motion to Withdraw** is a general document that should be used when the portion of the case the attorney became “of record” has concluded.

LIMITED SCOPE REPRESENTATION AGREEMENT

GENERAL CIVIL LAW

Identification of Parties: This agreement is made between Attorney, _____ and Client, _____. Both parties signed two original versions and each party received a signed original.

1. **Nature of Case.** Client requests services from Attorney in the type of case listed below:

   [___] BANKRUPTCY

   [___] CONTRACT

   [___] LANDLORD/TENANT

   [___] PROBATE/WILLS

   [___] REAL ESTATE

   [___] OTHER:_____

2. **Client Responsibilities and Control.** Client will handle all parts of the case except those that are assigned to Attorney. Client will be in control of the case and will be responsible for all decisions made during the case.

   Client agrees to:

   a. Cooperate with Attorney and Attorney's staff by giving them all information they reasonably request about the case.

   b. Tell Attorney anything s/he knows about the case, including any concerns s/he has about the case, and to update Attorney as new information or concerns occur.

   c. Provide Attorney with copies of all court documents and other written materials that the Client receives or sends out about the case.

   d. Immediately provide Attorney with any new court documents, including pleadings or motions, received from the other party.

   e. Keep all documents related to the case together and organized in a file for Attorney to review as needed.

3. **Attorney Responsibilities.**

   a. Assigned Services. Client and Attorney have completed the Task Assignment Checklist attached to this document. Attorney is responsible for completing the services marked "Yes" in the "Attorney To Do" column. Client is responsible for completing the services marked "Yes" in the "Client To Do" column. If someone other than Attorney or Client is responsible for completing a

service, “Other” will be written to the right of the “Client To Do” column. Client is also responsible for any service not assigned specifically to Attorney or “Other”.

Limitation of Issues. Attorney is responsible for **only** the following issues:

_____

_____

_____

b. Unassigned Services and Limited Issues.

- **ATTORNEY IS RESPONSIBLE FOR ONLY THE SERVICES UNDER THE “ATTORNEY TO DO” COLUMN OF THE ATTACHED TASK ASSIGNMENT CHECKLIST AND THE ISSUES LISTED IN THE “LIMITATION OF ISSUES” PARAGRAPH ABOVE.**
- Client is responsible for any service not assigned specifically to Attorney or “Other”.

c. Additional Services. Client may request that Attorney provide additional services. If Attorney and Client agree that Attorney will perform other services or work on other issues, those changes must be dated and initialed by both Attorney and Client on the attached Task Assignment Checklist. Attorney will be responsible for the additional services on the date that both Attorney and Client initial the change. If Client decides to retain Attorney to handle Client’s entire case, Client and Attorney will sign a new written Agreement that outlines Attorney’s additional responsibilities in Client’s case. Client will pay additional fees for additional services.

d. Right to Seek Advice of Other Counsel: Client has the right to ask another attorney for advice and professional services at any time during or following this Agreement.

e. No Guarantees. Client states Attorney has not made any promises or guarantees that his/her involvement in the case will cause a certain outcome or result.

Attorney cannot guarantee the case will be successful. Client states that 1) Attorney has not promised or guaranteed an outcome, 2) Attorney has not promised or guaranteed how long the case will take to resolve, and 3) Attorney may give his/her opinion about how the case may end, but those statements are just opinion, not a promise or guarantee.

f. No Settlement without Client’s Consent. Attorney will not settle Client’s case without Client’s consent.

4. Attorney of Record. Attorney and Client intend that Attorney will only perform the services assigned to Attorney. If the service requires Attorney to become attorney of record or make a Court appearance, Attorney is only responsible for the assigned services. If the Court requires Attorney to be responsible for other services or issues that Attorney and Client did not agree to, Attorney may withdraw as Client’s attorney. If Attorney withdraws as Client’s attorney, Client will file any Substitution of Attorney forms Attorney reasonably requests. If Attorney accepts the additional services the Court orders, Client shall pay Attorney additional fees for those services. The hourly pay rate is listed below in paragraph 5.

5. Method of Payment for Services:

a. Hourly Fee

Attorney charges the following hourly fee:

1) Attorney $_____

2) Associate $_____

3) Paralegal $_____

4) Law Clerk $_____

The hourly fee is payable at the time of the service unless agreed to by Attorney and Client in paragraph 5b below. Attorney's charges will be based on one-tenth of an hour (six minutes) with rounding to the nearest one-tenth.

b. Payment from Deposit. Client will pay to Attorney a deposit of $_____, which must be paid to Attorney on or before _____. Attorney will deposit this money in his/her trust account. Attorney will perform services based on the hourly rate listed above in paragraph 5a. Client authorizes Attorney to deduct payment from this deposit when services are performed.

Interest earned by the deposit will be paid to the Texas Access to Justice Foundation, as required by law, to fund legal services for low income individuals. When Attorney completes all the assigned tasks, if there is money left from the deposit, Client will receive a refund.

c. Costs. Client will pay Attorney's out-of-pocket costs. These include long distance fees, copying, and postage. Client will directly pay costs to third parties. These include filing fees, investigation fees, deposition fees, etc. Attorney will not advance costs to third parties on Client's behalf.

d. No Guarantees as to Fees and Costs. **Client states that Attorney has not promised how much the total costs and fees would be for Client's case**. **At this time, Attorney is unable to estimate the cost of legal fees. As the case develops, Attorney will discuss with Client how much he/she estimates the legal fees will be if Client wishes.**

6. Discharge of Attorney: Client may fire Attorney at any time. Client must give Attorney written notice. The termination is effective when Attorney receives the written notice. Unless Attorney and Client agree, Attorney will provide no further services after he/she receives the termination notice. Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the termination.

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In addition, Attorney may withdraw at any time as permitted under the Texas Disciplinary Rules of Professional Conduct. The Rules allow an attorney to withdraw for several reasons, including: a) Client consents, b) Client's conduct makes it unreasonably difficult for Attorney to effectively work, or c) Client fails to pay Attorney's fees or costs as required by this Agreement.

Even if Attorney withdraws, Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the withdrawal.

Release of Client's Papers and Property. Once all of Attorney's services are performed, if Client requests Client's papers and property be returned, Attorney will release all of Client's papers and property to Client within a reasonable period of time. If Client does not make this request, then Attorney may dispose of the papers and property after three years following completion of services.

8. Resolving Disputes between Client and Attorney

a. Notice and Negotiation. If Attorney or Client has any disputes, they will inform the other in writing. Both Attorney and Client agree to meet within ten (10) days of the written notice to negotiate a solution.

b. Mediation. If Attorney and Client cannot reach an agreement during negotiation, Attorney and Client shall attempt to agree on a neutral mediator within fifteen (15) days of the failed negotiation. If Attorney and Client cannot agree on a neutral mediator, they shall request that _____ select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. Attorney and Client shall share the costs of the mediation, but paying costs and attorney's fees may be part of the mediation. Client does not waive his/her rights to a trial de novo (a new trial) by agreeing to this mediation.

9. Amendments and Additional Services. This written Agreement and attached Task Assignment Checklist outline all the rights and responsibilities of Attorney and Client. All amendments shall be in writing and made part of this Agreement.

10. Severability in Event of Partial Invalidity: Even if part of this Agreement is found to be unenforceable for any reason, the rest of the Agreement will remain in effect.

11. Applicable Law and Forum. This Agreement shall be understood under the laws of the State of Texas and the parties shall complete their assignments in _____ County, Texas. The Agreement shall bind the parties and their legal representatives, including heirs, executors, administrators, successors, and assigns.

12. Attorney has informed Client that the case may involve tax issues. Attorney is not a tax expert and cannot give tax advice. Client may ask a tax expert for advice on any tax issue.

13. Any agreement Attorney and Client had before this Agreement is cancelled. All changes to this Agreement must be in writing, dated, and signed or initialed by both Attorney and Client. Even if Attorney or Client do not enforce this Agreement or do not require the other to fulfill his/her obligation, the Agreement is not invalid or waived.

14. I have carefully read this Agreement and understand all of its provisions. I show I agree with the following statements by initialing each one:

a. [___] I have accurately described the nature of my case in Paragraph 1.

b. [___] I am responsible for my case and will be in control of my case at all times as described in Paragraph 2.

c. [___] The services that I want Attorney to perform in my case are identified by the word "YES" in the "Attorney To Do" column of the "Attorney/Client Assignment Attachment for General Civil Law Service Agreement". I take responsibility for all other aspects of my case, both those services assigned to me under the "Client To Do" column of the attached Task Assignment Checklist and those not assigned to anyone.

d. [___] I understand and accept the limitations on the scope of Attorney's responsibilities identified in Paragraph 4 and understand that Attorney will not be responsible for my conduct in handling my own case.

e. [___] I will pay Attorney for services as described in Paragraph 5.

f. [___] I will resolve any disputes I may have with Attorney under this Agreement in the manner described in Paragraph 8.

g. [___] I understand that any amendments to this Agreement will be in writing, as described in Paragraph 9.

h. [___] I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client *before* I sign this Agreement.

NOTICE TO CLIENTS

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with an attorney involves professional misconduct, the State Bar Office of the General Counsel will provide you with information about how to file a complaint.

For more information, please call 1-800-932-1900. This is a toll-free call.

CLIENT SIGNATURE _____ **DATED:** _____/_____/_____

ATTORNEY SIGNATURE _____ **DATED:** _____/_____/_____

Task Assignment Checklist for
General Civil Law Service Agreement

SERVICES TO BE PERFORMED:	ATTORNEY TO DO	DATE	CLIENT TO DO
Initial consultation and review of documents provided by Client (list documents):		___/___/_____	**N/A**
Advice about legal rights, responsibilities, procedures and strategy relevant to issues identified by Client (list issues)		___/___/_____	**N/A**
Draft initial court documents (describe):		___/___/_____	
Review and edit Court documents prepared by Client (describe):			**N/A**
File and serve papers (list):		___/___/_____	
Advice about fact-gathering and discovery		___/___/_____	**N/A**
Factual investigation: contacting witnesses and/or expert witnesses, obtaining documents, public record searches (describe):		___/___/_____	
*Draft discovery requests or responses (describe): *"Discovery" is a legal term that describes tools used to uncover information from other parties.		___/___/_____	
Review and edit discovery requests or responses prepared by Client (describe):		___/___/_____	**N/A**
**Take or defend depositions (specify): **A "deposition" is a witness's out-of –court testimony.		___/___/_____	
Review and analyze depositions and documents (specify):		___/___/_____	

Draft correspondence		___/___/_____	
Review and edit correspondence prepared by Client		___/___/_____	**N/A**
Legal research (list issues):		___/___/_____	
Advice about settlement proposals		___/___/_____	**N/A**
Draft settlement proposal		___/___/_____	
Review and edit settlement proposal prepared by Client		___/___/_____	**N/A**
Review of settlement proposal submitted by opposing party, and advice regarding same			**N/A**
Advice about negotiation and alternative dispute resolution		___/___/_____	**N/A**
Negotiation of specified issues (list):		___/___/_____	
Mediation of specified issues (list):		___/___/_____	
Advice about conducting a hearing and presenting evidence			**N/A**
Prepare subpoenas		___/___/_____	
Review and edit subpoenas prepared by Client		___/___/_____	**N/A**
Outline witness testimony and/or argument (specify)		___/___/_____	
Trial of specified issues (list):			
Advice about orders and judgments		___/___/_____	**N/A**
Draft orders and judgments (describe):		___/___/_____	
Review and edit orders and judgments prepared by Client and/or opposing party		___/___/_____	**N/A**
Advice about other documents (describe):		___/___/_____	**N/A**
Draft other documents (describe):		___/___/_____	
Review and edit other documents prepared by Client and/or opposing party(describe):		___/___/_____	**N/A**

Other (describe):		___/___/_____	
Other (describe):		___/___/_____	
Other (describe):		___/___/_____	
Advice about appeal		___/___/_____	**N/A**

CLIENT SIGNATURE _____ DATED: _____/_____/_____

ATTORNEY SIGNATURE _____ DATED: _____/_____/_____

Initial Interview Checklist of Issues - General Civil

I met with _____ on _____, 20_____

regarding _____

I performed a conflicts check on: _____

We discussed the following issues:

Date of Incident/Occurrence_____

Legal Theories/Causes of Action/Elements of Claim or Defense_____

_____

_____

Statute of Limitations_____

Underlying Goals_____

_____

Likely Response from Other Side_____

_____

Possible Settlement_____

Costs of Litigation_____

Alternatives to Litigation_____

_____

Challenges of Case_____

_____

Ability to Collect Judgment_____

Possible Insurance Coverage_____

Possible Bankruptcy (either debtor or creditor)_____

Duration of Case_____

Jurisdictional Issues_____

Venue_____

Possible Service of Process Challenges_____

_____

Defenses_____

Motions Attacking the Pleadings_____

Discovery_____

_____

_____

Burdens of Proof_____

Evidence_____

_____

Witnesses_____

_____

Other related matters (i.e. relationship of parties) _____

_____

Ability to Self-Represent_____

We discussed the pros and cons of Limited Scope Representation:_____

Advised of right to seek counsel on issues outside of the scope_____

Other:_____

We discussed the following coaching options: _____

_____

_____

Client's initials: _____ Date:_____

Attorney's initials: _____ Date:_____

[CAPTION]

Notice of Limited Appearance

The undersigned Attorney and Party have executed a written agreement whereby the Attorney will provide limited representation to the Party.

The Attorney's appearance in this matter is limited to the following hearing(s) on the following issue(s):

Date of Hearing(s) (if known):_____
Issue(s) to be Heard:_____
_____

Upon termination of representation indicated above, the Attorney will file a Motion for Withdrawal of Limited Appearance in this Court, and serve a copy upon the party and opposing counsel and/or party.

The Attorney named above is "Attorney of Record" and available for service of documents only for the hearing(s) and issue(s) as described above. For all other matters, the party must be served directly at the address shown below.

_____
Signature of Party Type or print Name of Party

_____
Address (*for the purpose of service*)

_____ _____
Party's Telephone Number Date

****

I certify that I have this day served the foregoing Notice of Limited Appearance on all counsel and all parties not represented by counsel.

_____
Signature of Attorney Type or Print Name of Attorney

_____
Attorney's Address

_____ _____
Attorney's Telephone Number Date

_____
State Bar No.

[CAPTION]

Motion for Withdrawal of Limited Appearance

The undersigned Attorney hereby moves the Court to permit Withdrawal of Limited Appearance as Attorney for [name and designation of party] _____ _____ in the above action.

The undersigned attorney hereby certifies that s/he has performed all tasks required under the Limited Representation Agreement with the Client and under all applicable rules of Court.

Said Attorney has knowledge of the following settings and deadlines in this case:

_____

_____

I certify that I have this day served a copy of this Notice of Withdrawal on the aforesaid party and upon all counsel and all parties not represented by counsel.

Date _____

_____

Signature of Attorney Type or Print Name

_____

Address

_____ _____

Attorney's Telephone Number State Bar No.

The undersigned party acknowledges that Attorney has completed all tasks required under the Limited Representation Agreement.

I acknowledge receipt of the foregoing Notice of Withdrawal.

_____

Signature of Party Type or Print Name of Party

_____

Address (*for the purpose of service):*

_____ _____

Party's Telephone Number Date

	LSR Rule	Conflicts	Communication	Writing	Fees	Ghostwriting	Withdraw	Advertise	Service	Other
Alabama	1.1*	6.5	4.2, 4.3	1.2		11				Rule of Civil Procedure 87
Alaska	1.2(c)*	6.5	1.2(c)							Rule of Civil Procedure 81
Arizona	1.2**	6.5	4.2, 4.3		1.5(b)	11(a)	5.1(c)			Rule of Civil Procedure 5.2, Rule of Family Law Procedure 9(B), 97
Arkansas	1.2*	6.5	4.2, 4.3							Order
California	3.35. 3.36****	1-650*				Family and Juvenile Rule 5.70, 3.37	Family and Juvenile Rule 5.71			FL-950, Rule of Court: Judicial Administration Rule 10.960
Colorado	1.2*, Appellate Rul	6.5	4.2, 4.3			11(b), Rule of County Court Civil Procedure 311(b)				Rule fo Civil Procedure 121
Connecticut	1.2(c)*	6.5	4.2, 4.3		1.5(b)		1.16			Family Court Ruoles of Civil Procedure 5(b)(2)
Delaware	1.2(c)*	6.5								
District of Columbia	1.2(c)*	6.5								Superior Court of DC Admin Order
Florida	4-1.2(c)*		4-4.2(b), 4-4.3(b)			4-1.2				Family Law Rules of Procedure
Georgia	1.2(c)*									
Hawaii	1.2(c)*	6.5								Comment [4] Revised Code of Judicial Conduct Rule 2.2
Idaho	1.2(c)*	6.5								Rule of Civil Procedure 11(b)(5), Court Administrative Rule 53
Illinois	1.2(c)*, Supreme C	6.5	4.2, Supreme Court Rule 11			Supreme Court Rule 137	Supreme Court Rule 13			
Indiana	1.2(c)*	6.5					Rule of Trial Procedure 3.1			
Iowa	32:1.2(c)*, 1.404(3	32:6.5	32:4.2, 1.442(2)			1.423(1)-(3)	1.404(4)	32:7.2		
Kansas	1.2(c)*, 115A^									US District Court, District of Kansas Local Rules
Kentucky	1.2(c)*	6.5								
Louisiana	1.2(c)*	6.5								Rule for Louisiana District Court 9.12
Maine	1.2(c)*	6.5	4.2(b)			11(b)***	1.16(c), 89(a)		5(b)	
Maryland	1.2(c)*	6.5					2-132, 3-132		1-321	1-324, 2-131, 3-131
Massachusetts	1.2(c)*	6.5								Supreme Judicial Court Order
Michigan	1.2(c)*	6.6	4.2, 4.3				Court Rule 2.117		Court Rule 2.107	
Minnesota	1.2(c)*	6.5								General Rule of Practice for the District Courts
Mississippi	1.2(c)*	6.5								
Missouri	1.2(c)*	6.5				55.03(a), (c)	1.16(C), 55.03(b)		43.01(b)	88.09
Montana	1.2(c)*, 4.1(a)***	6.5	4.2, 4.3			11	4.2(b)		4.1(b), (c)	4.2(a)
Nebraska	501.2(b)*, 6-1109(	506.5	504.2[10]			501.2(c), 6-1111(b)^^^	501.2(e), 6-1109(i)^^^			501.2(d)
Nevada	1.2(c)*	6.5								Rules of Practice of the 8th Judical District
New Hampshire	1.2(c)*	6.5	4.2			17(g)	17(f)		3***	17(c)
New Jersey	1.2(c)*	6.5								
New Mexico	16-102(c)*									
New York	1.2(c)*	6.5								
North Carolina	1.2(c)*	6.5								
North Dakota	1.2(c)*	6.5					Rule of Court 11.2		5(b)	11(e)
Ohio	1.2(c)*	6.5								
Oklahoma	1.2(c)*	6.5								
Oregon	1.2(c)*	6.5				Trial Court Rule 2.010(7)				
Pennsylvania	1.2(c)*	6.5								
Rhode Island	1.2(c)*	6.5								Provisional rules
South Carolina	1.2(c)*	6.5								
South Dakota	1.2(c)*	6.5								
Tennessee	1.2(c)*	6.5							5.02	11.01
Texas	1.02(b)									
Utah	1.2(c)*	6.5	4.2, 4.3				74(b)		5(b)(1)	75
Vermont	1.2(c)*	6.5					79.1(3)		79.1(4)	79.1, Rules of Family Proceedings 15(h)
Virginia	1.2(b)*	6.5								
Washington	1.2(c)*	6.5	4.2, 4.3		1.5(f)(2)	11				4.2, 70****, Civil Rule of Limited Jurisdiction 11, 70.1
West Virginia	1.2(c)*									
Wisconsin	1.2(c)	6.5	4.2(b), 4.3(b)		1.5(b)	1.2(cm)				statutes, Milwaukee County Family Division
Wyoming	1.1 [4], 1.2(c)*	6.5								1.2[7], Uniform Rule fo District Court 102(a)

* Rules of Professional Conduct
** Ethics Rules
*** Rules of Civil Procedure
****Civil Rule
^ Supreme Court Rule
^^ Rules of Procedure
^^^Rules of Pealding in Civil Cases

Professional Responsibliity

* Rules of Professional Conduct
** Ethics Rules
*** Rules of Civil Procedure
****Civil Rule

	LSR Rule	Conflicts	Communication	Writing	Fees	Ghostwriti	Withdraw	Advertise	Service
Alabama	x	x	x	x		x			
Alaska	x	x	x						
Arizona	x	x	x		x	x	x		
Arkansas	x	x	x						
California	x	x				x	x		
Colorado	x	x	x			x			
Connecticut	x	x	x		x		x		
Delaware	x	x							
District of Columbia	x	x							
Florida	x		x			x			
Georgia	x								
Hawaii	x	x							
Idaho	x	x							
Illinois	x	x	x			x	x		
Indiana	x	x					x		
Iowa	x	x	x			x	x	x	
Kansas	x								
Kentucky	x	x							
Louisiana	x	x							
Maine	x	x	x			x	x		x
Maryland	x	x					x		x
Massachusetts	x	x							
Michigan	x	x	x				x		x
Minnesota	x	x							
Mississippi	x	x							
Missouri	x	x				x	x		x
Montana	x	x	x			x	x		x
Nebraska	x	x	x			x	x		
Nevada	x	x							
New Hampshire	x	x	x			x	x		x
New Jersey	x	x							

	LSR Rule	Conflicts	Communication	Writing	Fees	Ghostwriti	Withdraw	Advertise	Service	
New Mexico	x									
New York	x	x								
North Carolina	x	x								
North Dakota	x	x					x		x	
Ohio	x	x								
Oklahoma	x	x								
Oregon	x	x				x				
Pennsylvania	x	x								
Rhode Island	x	x								
South Carolina	x	x								
South Dakota	x	x								
Tennessee	x	x							x	
Texas	x									
Utah	x	x	x				x		x	
Vermont	x	x					x		x	
Virginia	x	x								
Washington	x	x	x		x	x				
West Virginia	x									
Wisconsin	x	x	x		x	x				PR
Wyoming	x	x								

* Rules of Professional Conduct/Responsibility

** Ethics Rules

*** Rules of Civil Procedure

****Civil Rule

^ Supreme Court Rule

^^ Rules of Procedure

^^^Rules of Pealding in Civil Cases

Appellate Rules

	LSR Rule	Conflicts	Communication	Fees	Ghostwriting	Withdraw	Service	Other		
Alabama	1.1*	6.5	4.2, 4.3		Rule of Civil Procedure 11			Rule of Civil Procedure 82		
Alaska	1.2(c)*	6.5	1.2(c)					Rule of Civil Procedure 81		
Arizona	1.1*	6.5	4.2, 4.3	1.5(b)	Rule of Civil Procedure 11(a)	Rule of Civ Pro 5.1(c)		Rule of Civil Procedure 5.2	Rule of Family Law Procedure 91BI. 97	
Arkansas	1.1*	6.5	4.2, 4.3					Order		
California	Rules of Court 3.35. 3.36	3.600*			Rules of Court 3.37			76.950		
Colorado	1.2*	6.5	4.2, 4.3		Rule of Civil Procedure 11(b)			Rule of Civil Procedure 121	Appellate Rule 5	LOCAL RULE D.C.COLO.LAttyR 2(b)(1) AND LAttyR 5(a)-(b)
Connecticut	1.2(c)*	6.5	4.2. 4.3	1.5(b)		1.16				
Delaware	1.2(c)*	6.5						Family Court Rules of Civil Procedure 5(b)(2)		
District of Columbia	1.2(c)*	6.5						Superior Court of DC Admin Order		
Florida	4-1.2(c)*		4-4.2(b), 4-4.3(b)		4-1.2			Family Law Rules of Procedure 12.040		
Georgia	1.2(c)*									
Hawaii	1.2(c)*	6.5						Comment [4] Revised Code of Judicial Conduct Rule 2.2		
Idaho	1.2(c)*	6.5						Rule of Civil Procedure 11(b)(5)	Court Administrative Rule 53	
Illinois	1.2(c)*	6.5	4.2. Supreme Court Rule 11		Supreme Court Rule 137	Supreme Court Rule 13		Supreme Court Rule 13		
Indiana	1.2(c)*	6.5				Rule of Trial Procedure 3.1				
Iowa	32.1.2(c)*	32:6.5	32:4.2							
Iowa	Rules of Civil Procedure 1.404(3)		Rule of Civ Pro 1.442(2)		Rule of Civ Pro 1.423(1)-(3)	Rule of Civ Pro 1.404(4)				
Kansas	1.2(c)*							Supreme Court Rule 115A	US District Court, District of Kansas Local Rules	
Kentucky	1.2(c)*	6.5								
Louisiana	1.2(c)*	6.5						Rule for Louisiana District Court 9.12		
Maine	1.2(c)*	6.5	4.2(b)		Rule of Civil Procedure 11(b)	Rule of Prof. Cond. 1.16(c), Rule of Civ Pro 89(a)	Rule of Civ Pro 5(b)			
Maryland	1.2(c)*	6.5				Rules of Procedure 2-132, 3-132	Rule of Procedure 1-321	Rule of Procedure 1-324, 2-131, 3-131		
Massachusetts	1.2(c)*	6.5						Supreme Judicial Court Order		
Michigan	1.2(c)*	6.6	4.2, 4.3			Court Rule 2.117	Court Rule 2.107			
Minnesota	1.2(c)*	6.5						General Rule of Practise for the District Courts		
Mississippi	1.2(c)*	6.5								
Missouri	4-1.2(c)*	4-6.5			Rule of Civil Procedure 55.03(a), (c)	4-1.16(C)	Rule of Civ Pro 43.01(b)	Rule of Civil Procedure 55.03(b), 88.09		
Montana	1.2(c)*. Rule of Civil Procedure 4.1(a)	6.5*	4.2, 4.3*		Rule of Civil Procedure 11	Rule of Civ Pro 4.2(b)	Rule of Civ Pro 4.1(b). (c)	Rule of Civil Procedure 4.2(a)	Attorney LSR Resources	
Nebraska	501.2(b)*	506.5	504.2[10]		501.2(c)	501.2(e)		501.2(d)		
Nebraska	Rules of Pleading in Civil Cases 6-1109(b)				Rules of Pleading 6-1111(b)	Rules of Pleading 6-1109(i)				
Nevada	1.2(c)*	6.5						Rules of Practice of the 8th Judical District		
New Hampshire	1.2(c)*	6.5	4.2		Rules of the Superior Court 17(d)	Rules of Superior Ct.17(f)	Rule of Superior Ct. 3	Rule of Superior Court17(c)		
New Jersey	1.2(c)*	6.5								
New Mexico	16-102(c)*	16-605				Rules of Civil Procedure 1-089(c), 2-108(A), 3-108(A)		16-303(E)*. 1-089(A)(1)**. 2-107(C)**. 3-107(C)**		
New York	1.2(c)*	6.5								
North Carolina	1.2(c)*	6.5								
North Dakota	1.2(c)*	6.5				Rule of Court 11.2	Rule of Civil Procedure 5(b)	Rule of Civil Procedure 11(e)		
Ohio	1.2(c)*	6.5								
Oklahoma	1.2(c)*	6.5								
Oregon	1.2(c)*	6.5			Trial Court Rule 2.010(7)					
Pennsylvania	1.2(c)*	6.5								
Rhode Island	1.2(c)*	6.5						Provisional rules		
South Carolina	1.2(c)*	6.5								
South Dakota	1.2(c)*	6.5								
Tennessee	1.2(c)*	6.5					Rule of Civil Procedure 5.02	11.01		
Texas	1.02(b)									
Utah	1.2(c)*	6.5	4.2, 4.3			Rules of Civil Procedure 74(b)	Rule of Civ Pro 5(b)(1)	Rule of Civ Pro 75		
Vermont	1.2(c)*	6.5				Rules of Civil Procedure 79.1(3)	Rule of Civ Pro 79.1(4)	Rule of Civ Pro 79.1		
Virginia	1.2(b)*	6.5								
Washington	1.2(c)*	6.5	4.2, 4.3	1.5(f)(2)	11			Civil Rule 4.2. 70	Civil Rule of Limited Jurisdiction 11. 70.1	
West Virginia	1.2(c)*									
Wisconsin	1.2(c)	6.5	4.2(b). 4.3(b)	1.5(b)	1.2(cm)					
Wyoming	1.1 [4], 1.2(c)*	6.5						1.2[7]		

* Rules of Professional Conduct or Responsibility
** Rules of Civil Procedure

Unattributed citations are from the state's Rules of Professional Conduct or Responsibility

SUBCOMMITTEE ON RULES 1-14C
Limited Scope Representation
Discussion Issues

Texas Disciplinary Rule of Professional Conduct 1.02(b) specifically permits a lawyer to limit the scope, objectives, and general methods of representation if the client consents after consultation. While limited-scope representation is authorized, existing procedural rules are not tailored for it. Travis County District Courts have adopted a local rule that more specifically addresses the mechanics and issues arising from limited-scope representation in a litigated matter.

The Texas Supreme Court has asked the subcommittee to draft procedural rules that are more tailored to limited-scope representation. The subcommittee has identified a number of issues that must be addressed and resolved in the drafting process. The subcommittee is thus seeking preliminary input and guidance on the following issues:

1. Disclosure. When a lawyer prepares legal papers or offers coaching to a client but neither signs the papers nor appears in court, must the representation be disclosed? Different states have taken three different approaches: (a) no disclosure is required; (b) disclosure to the court of the lawyer's involvement is required; and (c) disclosure is required but disclosure expressly does not constitute entry of an appearance in the case. Which is preferable?

2. Notice. Currently, a lawyer who appears in court makes a general appearance in a case. Should Texas permit filing of a notice of limited-scope representation that limits the appearance of counsel to specific matters?

3. Service. If a notice of limited-scope representation is filed, what are the obligations of opposing counsel and the court on service and notice? Which of these three options is preferable: (a) service/notice only on counsel until withdrawal; (b) service on both client and counsel until withdrawal; or (3) service/notice on limited-scope attorney only for those matters within the notice and service/notice on limited-scope client on all other matters until withdrawal?

4. Communication by opposing counsel with limited-scope client. May opposing counsel communicate directly with the limited-scope client on matters not within the limitation?

5. Conclusion/withdrawal. Once the lawyer has completed all matters within the limited scope, what steps must be taken to withdraw: (a) notice of withdrawal and hearing; (b) notice of withdrawal but no hearing if notice states that all matters within

scope of limited representation have been completed and notice is signed by client; or (c) notice of withdrawal but no hearing if notice states that all matters within scope of limited representation have been completed, notice is signed by client, and all parties consent to the withdrawal.

6. Court discretion to deny withdrawal. Should the court have discretion to deny withdrawal if the required steps to withdraw are done: (a) yes; (b) no; or (c) only if there the court determines that tasks within the scope of the limited representation remain uncompleted. Should the trial court retain the general discretion to deny withdrawal under Texas Disciplinary Rule of Professional Conduct 1.15(c) to prevent undue delay or expense to the opposing party or to see that justice is done?

7. Scope of limited representation. Rule 1.02(b) does not place any restriction on the ability of a lawyer and client to limit the scope of representation. Should that ability be limited to what is reasonable under the circumstances? Are there matters that cannot reasonably be undertaken by limited-scope representation?

8. Consent to limited representation. Rule 1.02(b) requires client consent after consultation. Should the standard be informed consent?

9. Disputes about scope. If the lawyer and client dispute whether particular tasks are within the scope of limited representation, how should that dispute be resolved, by the court or through the grievance process? Should the trial court have discretion to review and alter the scope of representation on grounds it is too narrow?

10. Conflicts. ABA Model Rule 6.5 provides that in certain circumstances, such as walk-in clinics sponsored by nonprofits, where a lawyer is providing short-term, non-continuing advice and where full conflict checks are not feasible, the lawyer is not subject to rules governing conflicts of interest except when the lawyer has actual knowledge of a conflict. Should Texas adopt some similar provision?

11. State-wide vs. local rules. Should any procedural changes to accommodate limited-scope representation be made state-wide or should a template be drafted to permit adoption as local rules by courts across the state?

STATE BAR OF TEXAS

Family Law Section

2018 FAMILY LAW SECTION SURVEY

The 2018 Family Law Section Survey was conducted electronically from February 5 to April 1.

Below is the purpose and scope of this survey:

The Family Law Section has been requested to send out the attached survey to help inform the Texas Supreme Court about issues related to limited scope representation. Texas Disciplinary Rule of Professional Conduct 1.02(b) specifically permits a lawyer to limit the scope, objectives, and general methods of representation if the client consents after consultation. To better allow litigants who would otherwise be self-represented to receive some assistance of counsel, the Texas Commission to Expand Legal Services, in its December 2016 report, recommended that the Texas Supreme Court consider amending procedural and ethics rules to address limited scope representation. The Supreme Court has asked its advisory committee to draft rules for the Court's consideration. Your participation in this survey about your experience with Rule 20 of the Travis County District Courts Local Rules will greatly inform that process.

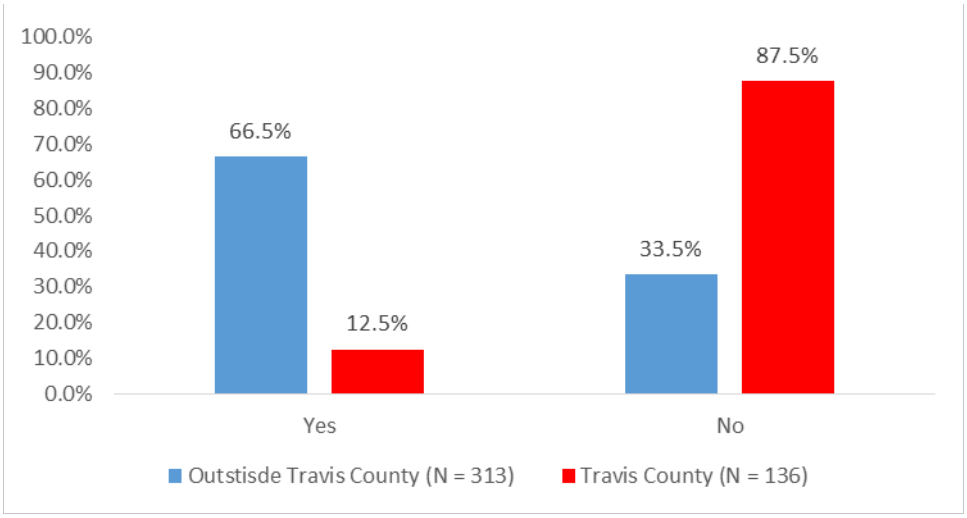
Population and sampling:

The population for the survey was sent to 13,623 Texas family law attorneys - a total of 5271 practicing in Travis County and a total of 8352 practicing outside of Travis County. Excluded from the survey were members who have opted out of participating in surveys and those who had not reported the Texas County they practice in.

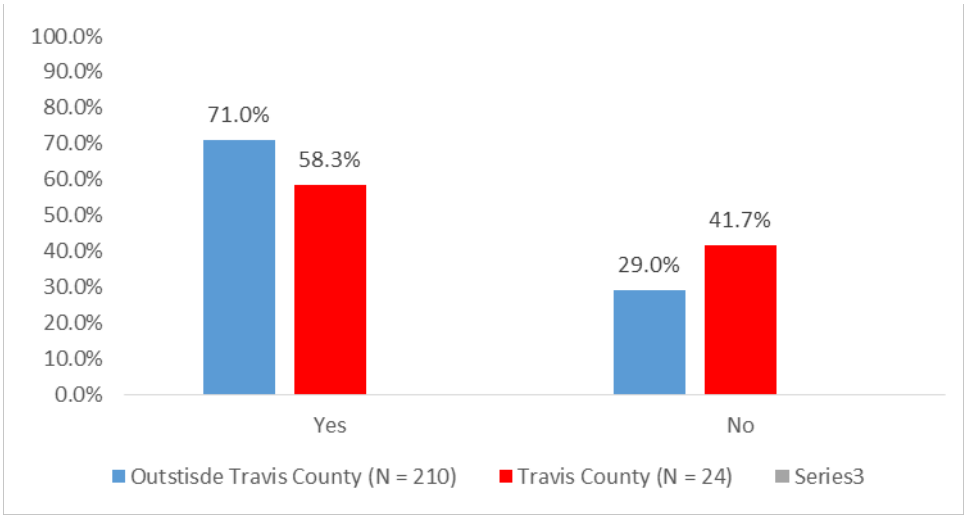
There were a total of 136 Travis County attorneys and 315 attorneys outside of Travis County who participated in the survey.

2018 FAMILY LAW SECTION SURVEY

1. Have you been involved in a case where you or another attorney provided limited scope representation to a litigant?



2. If yes, did the limited scope representation go smoothly?

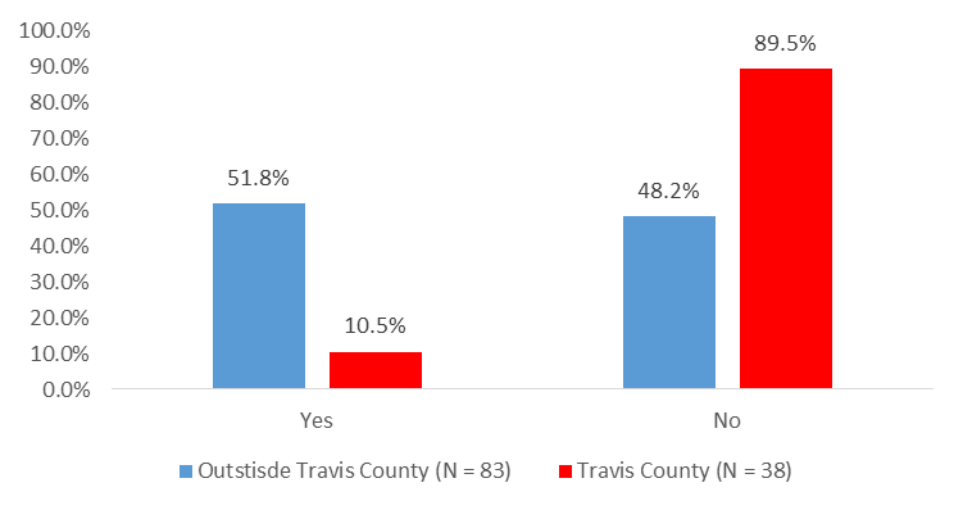


2018 FAMILY LAW SECTION SURVEY CONTINUED

3. If no…

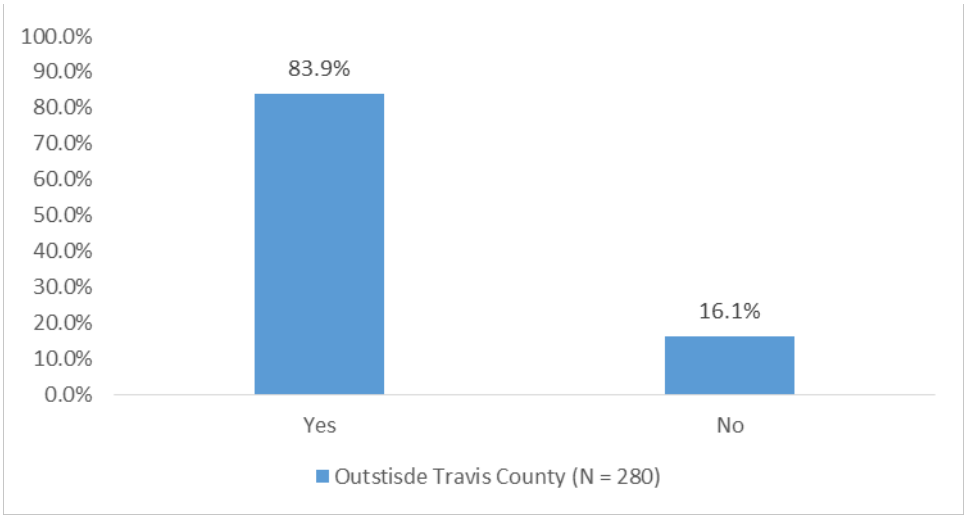
Outside Travis County: Did the problems with the limited scope representation arise because there are no procedural rules specifically governing limited scope representation? ***Note: Comments on pages 7-10***

Travis County: Were any problems with the limited scope representation or its conclusion related to the language of Rule 20? ***Note: Comments on page 11***



4. Would it help to have procedural rules specifically addressing limited scope representation, including appearance, service, and withdrawal?

Note: Only asked to those outside of Travis County.

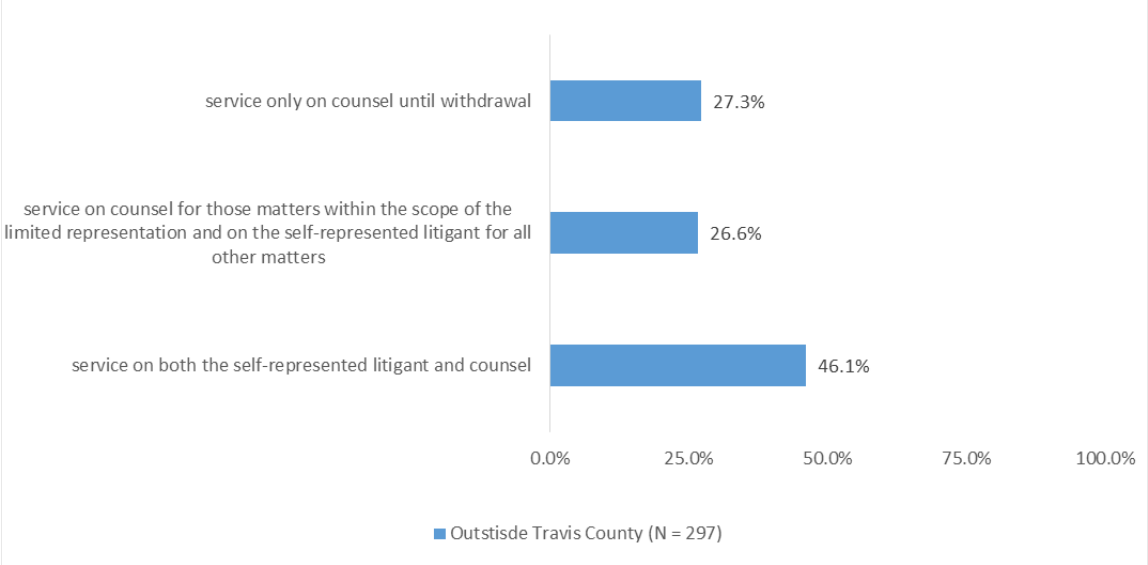


5. Attorneys currently have the right to limit the scope of their representation with client consent after consultation. If you believe that further restrictions should be imposed upon an attorney's ability to limit the scope of their representation of a client, then please describe specifically what limits should be imposed.

Note: Comments on pages 12-17

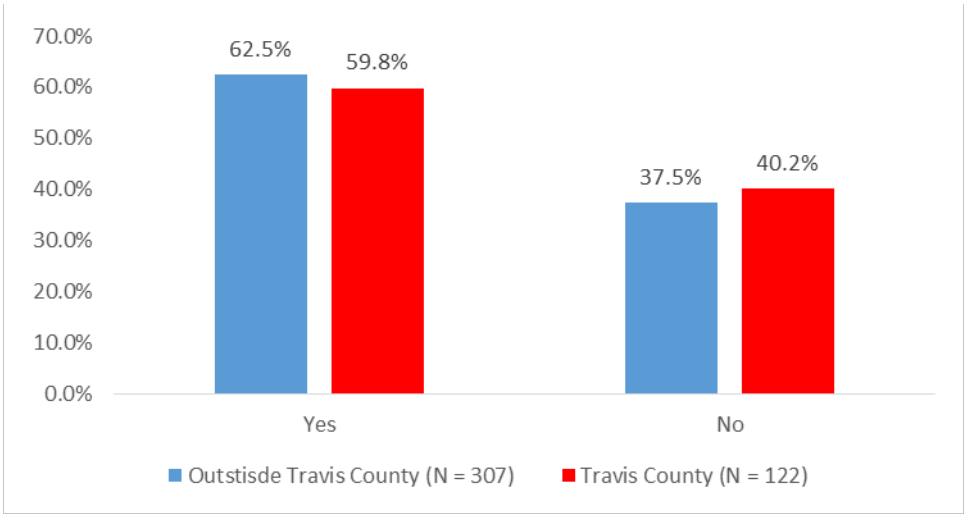
6. If an attorney files a notice of limited appearance in a case, how should service be accomplished?

Note: Only asked to those outside of Travis County.

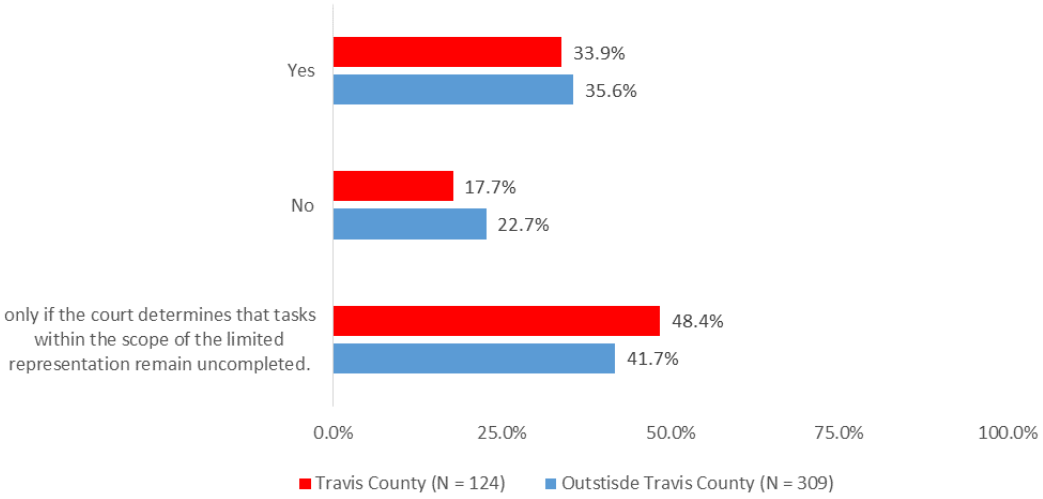


2018 FAMILY LAW SECTION SURVEY CONTINUED

7. If any attorney provides services on a limited scope basis but does not appear in court, should the representation nonetheless be disclosed to the court?



8. A trial court currently has the discretion to deny an attorney's motion to withdraw, despite the existence of good cause, when justice requires the representation to continue. Should the trial court's discretion be eliminated in order to promote limited scope representation?



2018 FAMILY LAW SECTION SURVEY CONTINUED

9. If you believe limits should be imposed upon a trial court's ability to deny withdrawal, in order to promote limited scope representation, then please describe what limits should be imposed.

Note: Comments on pages 18-19

COMMENTS

3. If no, please briefly describe any problems that arose involving the limited scope representation.

At times you have to deal with the pro se and then the attorney. The attorney did not have the authority to resolve all issues so it make negotiating difficult.
Attorney simply kind of disappeared from case without having withdrawal granted.
boundaries are not observed.
Causes extreme delays in the litigation process
Challenges with being able to get off the case once the limited scope issue, such as Temporary Orders hearing, is completed.
Client agreed to limited scope. Then, client wanted to go to trial when arbitration did not go his way.
Client does not understand the written agreement, gets mad when attorney stops services as agreed. Client feels cheated and the public perception of the profession is tarnished. The client's who most need such services are also the ones least likely to read and understand the retention agreement.
Client expecations, regardless of how clear the limitation is, tend to be your are thjeir lawyer forever and for everything.
Client fired 1st lawyer and wanted 2nd lawyer to forfeit fees of 1st lawyer.
Client ignored Judge's instructions in regard to the LIMITED SCOPE
Clients always need more help than they realize. When they bump into the edges of the limited scope, the attorney stops and they are left floundering. This is especially so if the attorney helps with "paperwork" but will not negotiate or attend mediation.
Clients never really understand the concept.
Client's often do not really understand what "limited scope representation" really means; thus their consent may not really be "informed" consent
Clients want to make excessive calls for the same exact question.
clients with limited employment always need additional assistance and a refusal becomes very damaging to the confidence in the relationship
cost to client if the "agreed" case turns into litigation
Counsel's limited scope was only representation in mediation. Counsel had no authority over pending pleadings, litigation, etc.
Difficult to limit scope in course of family law case. Limit to habeas corpus, but not modification or enforcement? Difficult to draw lines of representation when the issues overlap.
Difficulty in communicating with litigant who was sometimes represented and sometimes not-difficulty I'm noticing of hearings etc
Even though client acknowledged in writing prior to limited scope representation, they have problems understanding WHY you will not assist them with other issues that arise.

COMMENTS CONTINUED

Former client kept referring to me as his lawyer even months after the one-time appearance. I kept being served with pleadings and notices despite not having been counsel of records for months.
I advised opposing counsel and the court that I was appearing for the limited purpose. I had a letter signed by my client indicating that she wished me to act on that particular aspect of the litigation and no other and that she understand that she was either to appear and defend pro se or that she could retain other counsel on all other aspects of the litigation. The court permitted me to act as instructed and then granted a withdrawal.
I guess I would say my experience was only with an attorney who was a "silent" limited scope attorney and that is always frustrating. But your next question would addresses the problems I have seen and it is frustrating on the issue of notice and service.
I had a judge refuse to accept my limited representation and demanded that I appear on a matter for which I had not been retained.
I have done it more than once. Sometimes it goes very well. I believe that some of the judges dislike limited scope and reject orders that they would have no problem with if the attorney were standing there.
I have done multiple where I provided the limited scope representation. I had one case where it did not go smoothly for multiple reasons, including that the court required me to have a hearing on what my scope in the case was and at the hearing the court required me to be fully in the case anyway.
I never knew whether to contact the party or the attorney regarding an issue in the case
I really cannot yet tell because the case will proceed to trial next month.
If it's beyond the scope of the agreement then the party needs to handle their matter in a customary manner.
If the answer was no. Could you not draw the conclusion that I had not had any limited scope representations because the case did not involve those issues. It read your own questions you morons.
In Federal Court Initial Appearance it is a standard option.
In most instances, they go smoothly. I have entered into many limited scope representation fee agreements. In one instance, however, it did not go smoothly because it turned out the Client did not have the ability to follow my directions in representing herself, despite convincing me she did.
In the middle of a hearing the attorney noted she did not represent the client on certain issues
In the two matters I am thinking of, the attorney was in late and out early and used as a weapon rather than to assist is resolving the matters.
It is difficult to be involved in a case, even on a limited basis, when 2 lawyers have different styles and skill sets.
It was difficult to determine when the representation ended, and to what extent a motion and order to withdraw was necessary.
Judge can deny Motion to Withdraw
Just confusion as to the matter of representation. Hard to separate out issues in family law
Limited scope always exceeds the initial scope and the attorney is stuck on the case

COMMENTS CONTINUED

Limited scope usually means lawyer doesn't come to court
No contact with the attorney assisting by limited scope.
Office of the Attorney General does not get involved in conservatirship and possession/access issues in SAPCR cases. This is a problem with pro se litigants or where only one side is represented by an attorney.
Often there will be issues that bleed over and billing can be problematic in this case. Also, if you are required to talk to an attorney for certain issues and directly to the party on other issues, it can be problematic.
Only the ones that are truly uncontested go smoothly. Most recently, I had been assisting a client with requesting and getting discovery. The client essentially got punished by the judge at the Motion to Compel because she had not hired an attorney full scope. Essentially, the judge just wasted several months of her time and a couple thousand dollars of money she spent on me advising her, and said that the parties should just start over on discovery. I have found that the clients are being punished even though they have an attorney assisting them. They also are very difficult clients, because they do not want to pay for anything, including for example, doing a final review and selection of discovery requests, or researching an issue that needs to be researched.
Other counsel could not make representations for their client and I ended up having to deal with both parties
overlap in evidence and attorney subjectively decided what was within scope at hearing and what wasnt, judge not happy
Parties disagreed on terms
party had trouble getting orders done and ended up not paying the mediator
Party wanted to continue to seek additional assistance
She refused to file into case as attorney of record and so I refused to discuss the case with her. Another attorney took over and entered the case as attorney of record.
The attorneys of the OAG Child Support Division represent the interests of the state, but must work closely with a parent whose interests are very similar (support), but can be very dissimilar (contested custody). In spite of attempts to clearly communicate the scope of representation with non-attorney individuals, misunderstandings can occur.
The boundary's became too "Convenient" for the limited scope attorney to hide behind, such as late discovery responses; or violations of the Temporary orders. Representation is like pregnancy: you are or your'e not.
The duration of the scope was not defined. Then do you send notice to the attorney or is that Respondent pro se. The attorney did not do a formal withdrawal.

COMMENTS CONTINUED

The Judge and client expect the "limited scope" attorney to know everything about the case and opposing counsel gets shoehorned into professionally accommodating the "limited scope" attorney and also representing their client. Limited scope attorney is an end run around securing local counsel.
The limited representation was a farce. The people still did not know how to ask and answer questions for a prove up divorce
the limited scope representation was fine. However, after the end of the scope of representation, the formal motion to withdraw as counsel and then requisite hearing to withdraw was time consuming and tedious.
The opposing party had limited scope representation in a matter which involved contempt and modification. My client was the moving party. My client's expenses were significantly higher as a result of the court, the parties and the other attorney trying to figure out exactly what assistance the attorney would and would not offer. There was significant discovery due, which initially went unanswered, the limited scope attorney failed to show up for some hearings without notice. This is just a few of the facts which created delays to the court and cost my client time and emotional and financial expense.
The opposing party thought "file an answer" meant the attorney was supposed to "answer the suit" essentially providing a full defense at the hearing. This lead to a fight between them, and delays in the court case.
The other attorney was unaware of the procedural problems once he filed an appearance. He thought sending me notice he wasn't her attorney was sufficient. I had to force him to withdraw.
The pro se litigant picked what he wanted to do and so opposing counsel never knew who was responsible for what. The court ordered that the attorney was to receive all correspondence as lead counsel but he refused.
There was already an attorney of record and a second attorney was retained only for the purpose of a hearing for a motion to continue, but there were other issues that were being dealt with on the same date for the same matter; it was unclear to the judge and to the other parties what the second attorney could or could not represent on behalf of her client;
When you get to court, there are so many reasons why the case can get reset. You signed on for a one day appearance that now ends up being three court appearances. As an attorney, your contract needs to be specific about what you are going to do for the client and how long the representation will last. This is a great idea, but it is still in its infancy. In the long run it will benefit our courts as well as the public.
Why did I steal money from her, etc.
Yes
You're in or you're out, it's sort of like being a pregnant in a limited fashion.

COMMENTS CONTINUED

3. If there were problems with the limited scope representation or its conclusion that do not relate to the language of Rule 20, then please describe them.

As an attorney for Legal Aid, I often provide what we call "pro se assistance." I often draft pleadings for a person to file pro se. I also give very detailed, written instructions for the person to follow. On a few occasions, a person has either purposefully or accidentally misrepresented what I told them to the Court. Luckily, the local judges know better - or know me better - than that. One person told a judge that she had paid me over $2,000 to represent her on a Habeas Corpus suit. The judge knew that couldn't be true, since I work for Legal Aid, and called me to confirm. Another person took a Legal Aid certificate that I signed, saying that she qualifies for Legal Aid, to a clerk and said that I would be filing a petition in her case. The clerk called me, and I was able to sort out that situation.
I had a client several years ago who insisted that he would handle his own hearing in an L/T matter before a JP. He ended up being held in contempt and having judgment entered against him for actual and punitive damages. Not a formal Limited Scope representation but is an example of how things can go wrong very badly.
The client said he had some other lawyer working on drafting discovery requests. I terminated the relationship and refunded the fee because it was no longer clear just what the scope of my representation WAS.
Too many to recount

COMMENTS CONTINUED

5. Attorneys currently have the right to limit the scope of their representation with client consent after consultation. If you believe that further restrictions should be imposed upon an attorney's ability to limit the scope of their representation of a client, then please describe specifically what limits should be imposed.

Attorneys should have a timely and ascertainable limitation that does not work to impede the case. If limited, then, they should not be able to change the scope afterwards.

I believe that all limited scope fee agreements must be in writing and should, with painful clarity, explain what the attorney will do or will not do so that the last sophisticated client is on notice of what they are getting for their money and what they are still on their own for.

I believe that the rule should be very clear and that the attorney needs to be very specific in his or her contract.

I disagree with limited scope. This permits an attorney to "muddy the water" and then climb out without further involvement.

I do not believe that there should be further restrictions.

I think clients should be able to select the limitation of their services as their desires and resources warrant. If you want access to justice be reasonable about what you expect.

I think the representation, even limited, needs to be taken to conclusion. Meaning, if representation is only for temporary orders, the attorney should ensure the orders are filed.

If an attorney is going to represent a person at a mediation that results in a settlement, they should also have to sign off on any court order generated from that agreement.

I'm fine with limited scope but there needs to be notice to opposing party and also the court. The attorney accepting limited scope needs to let us know what exactly they're going to do on the case (see problems I noted above).

It is my opinion that there should be no further restrictions on an attorney's ability to limit the scope of representation, provided that any forum in which such a motion or request is made is notified of the request and retains the ability to make reasonable orders regarding the scope of representation.

COMMENTS CONTINUED

no further restrictions
No restrictions should be imposed on an attorney's ability to limit the scope of their representation.
No the limited scope should be clearly set out in writing, agreed to by the client, and the attorney should be allowed to withdraw following completion of that role.
Not necessarily more limitations, but having a rule clarifying the practice could be useful.
Perhaps, examinations should be sectioned into what is covered in the limited scope and then or before matters outside the scope.
The repression should be restricted to the terms and case contained in the contractual agreement
There should probably be something in writing which clearly limits the scope of the representation, rather than just relying on some statement that the scope of the representation was limited.
There shouldn't be limited scope in any contested case.
This creates a burden on opposing counsel, that is unexpected and often unreasonable. If OC represents their client for a period of time, and then disappears, counsel is at a loss and disadvantage when dealing with a recalcitrant opposing party. At a minimum, the limited scope has to be revealed to counsel and the court. The Court should then, if an objection is filed, be able to rule on the reasonableness of OC representation.
You shouldn't be able to act as counsel for only certain issues when the litigation will touch on multiple issues that are interrelated. For example, counsel only for property division when divorce deals with children.

COMMENTS CONTINUED

**It is dangerous to put any limits on an attorney's ability to limit the scope of their representation, especially in family law, where many ancillary issues may arise.
All limitations should be very specific and in writing with understanding they will be given to the court upon request by the court or opposing counsel.
An appearance in Court should be for all matters in Court in that particular suit.
Any attorney employed by a public entity should formally withdraw on behalf of the agency at the completion of any matter that is settled. No continuing representation on a limited basis should be allowed
Any fee associated with the consultation, even non-refundable, should be reasonable and the agreement should not allow for "ghostwriting" through the entire litigation but instead but truly limited and targeted.
Attorneys should not be able to appear in court for one hearing and then not have to withdraw. It makes determining who to service and how to serve impossible.
Client should be limited on actions against counsel
Client should be required to sign document stating that he/she understands that they have counsel for limited scope and that counsel is not responsible for anything outside of that limited scope.
clients need to sign a waiver containing an acknowledgement that they understand what the attorney is, and is not responsible for.
Do away with it It encourages inept and lazy lawyers
Do not believe in "limited scope representation"; if one signs on to a case, they are on the case. "Pro Se" litigants don't know the rules and cannot adequately represent themselves. Do not believe this idea is "just".
EVEN ATTORNEYS FILING notice of limited representation should, in my opinion, be compelled to appear in court in cases involving division of real property, corporate stock, and bonds whether municipal or corporate. m, TO
Generally, it is difficult to limit scope in a family litigation matter. More specifically, a client's understanding of legal concepts, much less difficult legal concepts, can affect any litigation; by adding limited scope into the mix, it can hopelessly complicate the issue for the client, and thus also for the attorney.
I believe attorneys should have the right to limit the scope of their representation with client consent after consultation
I believe that either an attorney is a party's attorney of record in the strictest sense or they are not. It is crazy to have one foot in the case and one foot out of the case
I believe that the attorney who chooses to take on this representation needs to do so based upon the current rules of ethics. The solution is not creating the role for an attorney in this situation. The solution is recognition that the court has made a mess in family law by degrading the practice to one where people in family law cases think they can represent themselves. Access to Justice does not require the direction we are headed with pro se representation.
I do not believe that further restrictions are necessary.
I do think reasonable limits should be imposed. Certainly, allowing an attorney to designate themselves as non-litigation in the type of case where litigation is often a result does not make sense.
I don't believe the rules should be changed. I believe the current version of the rule adequately addresses the situation.
I don't believe we should permit limited scope in family law cases.

COMMENTS CONTINUED

I don't think additional restrictions are required.
I have been court-appointed in IV-D cases where my initial appointment was not general but stated that it was for a limited purpose.
I think that the limits need to be set by rules and not by the client after consultation. That would mean each case will be unique. We shouldn't have to wonder who is responsible for what in each limited scope representation situation.
If they appear & court makes a ruling, then they should stay in until the order is signed by the court. They may or may not have to draft the order, depending on the court's wish/order.
In family law, limited representation is very difficult because of the inseparability of many issues: divorce/conservatorship; custody/rights & duties/child support; etc. So, I think that trying to draft general restrictions which would apply to every area of practice would be ineffective at best and a quagmire at worst. Better to have general guides which suit every area of practice and then rely upon the TRE's, TRCP and CRPC
inapplicable; I do not believe further restrictions should be imposed but rather that the attorney be able to point to clear rules and procedures for keeping it limited.
Judge and opposing counsel should be able to inquire
Just needs to be a clear agreement on what the limited scope is - similar to collaborative law - lawyer agrees to do everything a lawyer does except go to court.
Limit all, either in or out
Limit the court's ability to not let you withdraw
Limited scope representation should be reduced to writing and disclosed to the court and placed on the record.
Limited scope should not be binding on opposing parties in court proceedings; rather, appearances in court proceedings by counsel should be general until withdrawal.
My limited scope representation specifies the types of tasks that the client and I agree that I will and will NOT perform.
n/a
No additional restrictions. It is a contract matter between attorney and client.
No further restrictions required. That would lead to interference by the courts to force an attorney to appear even though the attorney has a contract for limited scope representation.
No further restrictions would be beneficial.
No limits should be imposed beyond those expressly agreed to by the client and the attorney in a written agreement signed by them both.
No limits should be imposed.
No limits.

COMMENTS CONTINUED

No!
No, it needs to be clarified that clearly that limited representation is limited representation.
No, there should be no more restrictions.
No.
No. if a client wants only limited scope of representation, that is the client's right. Of course, it is recommended that the attorney draw up a written limited scope representation agreement to protect himself and be clear with the client as to what they have agreed to.
None
none
None
none
none whatsoever
None.
none.
None. So long as it is written down.
Other than disclosure, there should be no other rules necessary. If you have a competent judge on the bench, which is truly doubtful these days in Texas, There should be no problem at all.
provide notice to opposing counsel, opposing pro se party, and interested third party such as a mediator
Require courts to allow prove up via court call, and much of this can be avoided.
Rules should make it clear that notice must be given to all parties or counsel for parties of the limited scope representation.
Should be in writing in the engagement agreement for that matter.
stages, not individual procedures (ie, initial hearings, first rulings...etc
Supreme Court should mandate that each attorney use a specific contract that designates exactly what the limited service will be and signed by attorney and client. In Family Law this is ultimately going to be a bad trap for the inexperienced young attorney and result in possible grievances.

COMMENTS CONTINUED

The current rules are adequate.
The emphasis should be on not leaving the client unrepresented. Each case and representation is different. The only limited representation is the hiring of specialized counsel to do a certain part of a case, like hiring outside counsel to do a special appearance.
The first disclosure should identify commmnity and seperate property issues
The limitation needs to be specific and in writing
The limits should be in writing both for the benefit of the client and those dealing with the attorney. There should be rules to clarify representation of "mediators" working with both parties in a divorce.
the opposing party or counsel should be made aware of the limited representation.
The problem arises in that clients do not seem to understand the term "Limited" Once you consult with a client and a limited fee is paid for specific assistance, it is very difficult to untangle the expected continued relationship.
There should be a written agreement that clearly describes what the lawyer is to do in basic terms the average person can understand.
There should be notice to the opposing party and counsel concerning the scope of the representation. It is very difficult to handle a case with a "pro se" who is not in fact pro se.
There should not be limited representation. It is asking for trouble for the attorney and the princiapls
To be known that clients can hire an atty (like expert W's) as a consultating attorney and not as a expert testimony, i.e., expecting the atty to appear at any and all proceedings.
warning should be given about commonly arising issues that will not be included.
Written agreement defining the scope of the representation. Make the rules clear that disclosure of representation, and therefore requirement to provide service to/on the limited rep attorney is optional but if the existance and scope of the limited scope representation is not disclosed there is no duty to serve the limited rep attorney. If you only rep in trial, you do not get any advantage for the client's violation of discovery...what the client did falls on counsel in trial.
You either represent someone or you don’t-it is one thing to do a document review-but actual limited representation creates huge problems
you're either in or you're out. you either represent the client or you don't.

COMMENTS CONTINUED

9. If you believe limits should be imposed upon a trial court's ability to deny withdrawal, in order to promote limited scope representation, then please describe what limits should be imposed.

1. Attorney should be permitted to withdraw absent what would constitute reversible error. An attorney forced to continue in the representation when the client does not want him there and/or communication between the attorney and client is an actual hindrance does no one any good.

After court objection to withdrawal, if the lawyer shows good reason for withdrawal justice should allow the withdrawal

An attorney should be able to withdraw at any time. This is America and slavery is unconstitutional

An attorney should not be forced into representation beyond the scope of the attorney-client contract.

Automatic withdrawal on limited scope agreements. Allow client to object and set hearing after withdrawal. Maybe require language informing client of that right in limited scope agreements.

client does not abide by terms of contract

Court should determine whether the tasks agreed to are complete.

Court should not trap a lawyer into additional representation where notice of limited scope had been given.

GRANTING WITHDRAWAL SHOULD BE MINISTERIAL

I despise the idea of being told that I have to continue representing a client who hasn't paid me or who is so difficult to work with that I am compelled to withdraw. The clients who pay the least often expect the most and are the quickest to grieve their lawyers.

I don't yet see how they are connected, but if you think it would encourage this representation then try it.

I generally do not take limited scope rep cases because I may be in the case for the duration if the Court does not allow me to withdraw.

I think that many judges will not agree with the idea of limited scope representation, and I think they will be likely to NOT allow withdrawal. So I think it will be necessary for courts to have to accept the terms of the limited scope representation. I think without such limits, the court is unlikely to let attorneys out of the case----courts don't want to have to deal with pro se litigants. If courts routinely refuse to allow limited scope representation, as a practical matter there will be none, contract or no.

If an attorney requests withdrawal, Court should not have the right to force an attorney to remain on the case and definitely should not be allowed to know why. This can cause future prejudice against the client if the reason reflects negatively on the client.

If the client is at risk of family violence without representation

COMMENTS CONTINUED

If the denial of the motion to withdraw is based upon the Court requiring the attorney to perform work that is outside the limited scope engagement agreement signed by the client, then the Court's ability to deny the withdrawal based on that should be limited.

If there is a final trial date, then I need to know if an attorney is going to represent the client at trial, in limited scope. I can envision a scenario where a limited scope attorney files their motion to withdraw a week before trial date and then the unrepresented client seeks a continuance to secure counsel; more often than not, the Judge will allow more time to retain a new attorney. The other party, if not wanting to go to trial, can "game" the system by doing this. Trial dates are hard to get in some courts because the dockets are so full (fyi).

It is not my opinion that the trial court's discretion to make orders denying a motion to withdraw as attorney should be limited beyond any limitation imposed at the present time.

Legal Aid gets dozens of applications every day from people who truly need representation, but we simply don't have the resources to take every case. If a judge were able to call me in and tell me that, because I provided some assistance, I would now have to take on that case as full representation, then I would have to stop offering pro se assistance. So, instead of drafting paperwork when no forms are available on texaslawhelp.org, instead of providing in-depth, personal instructions on filing and presenting a person's case, I would be limited to giving the 3-line, basic information on a divorce or custody case, and both the courts and the clients would suffer.

Limited scope involvement should be discouraged and never permitted. We should not promote limited scope representation.

Limited scope representation should be disclosed immediately upon first filing. If counsel for other party has an objection, then the Court should be able to hold a hearing to determine the reasonableness of that limited scope representation. Without some sense of the purpose of an appearance in litigation, it is impossible to properly represent a client. Attorneys and clients in traditional representations are bound by rules of Court. Limited Scope Representation Agreements place the attorney and his/her client outside the Rules.

Motions to Withdraw in limited scope representation should be filed within 3 days of the lawyer's receipt of a notice of trial or hearing so that the MWD is not heard at a time that necessarily requires continuance of the case settings.

No one should be forced to work for free or with someone that is difficult to work with. Trial court discretion usually means screwing the attorney.

Only if the matters within the scope of limited representation have not been completed.

The court should not have the discretion to deny a motion to withdraw that was properly served on a client and which is filed with the court at least 30 days prior to trial.

The Court should not have the right to continue the relationship of the attorney and the client once they have defined it contractually.

The trial court's ability to deny withdrawal should be limited to the specific hearing or matter within the limited scope notice. When the specific hearing and orders based on decisions rendered in the specific hearing are entered, then the limited scope attorney should be permitted to withdraw and/or service notice that his/her limited scope services have been completed.

they can only be limited to what the agreement was. If it had to do with appearing in court they should still appear.

This would be stupid.

Withdrawal in limited scope representation should be automatic unless the Court finds specific and stated good cause, limited to unfair prejudice to the other party and that it would cause delay where the matter is time critical.

Tab EE

Proposed Amendments to Texas Rules of Civil Procedure 8 and 10
(Subcommittee Draft 9/26/18)

Rule 8. Attorney in Charge

Rule 8.1. General Appearance

(a) An attorney whose signature first appears on the initial pleadings for a party is the attorney responsible for the suit for that party, unless:

(1) the initial pleadings designate another attorney as the attorney in charge; or

(2) the attorney files a notice of limited appearance under this rule.

(b) Any change in the designation of the attorney in charge must be made by written notice to the court and all parties to the suit.

(c) All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.

Rule 8.2. Limited Appearance

(a) *Notice Required.* An attorney making a limited appearance in a case on behalf of a party not otherwise represented by counsel must file with the court a notice of limited appearance, signed by the attorney and the party. The notice must be served on all parties to the suit. The notice must identify:

(1) the attorney making the limited appearance;

(2) the party the attorney represents;

(3) the tasks for which the attorney will represent the party; and

(4) the service information for the attorney and the party.

(b) *Notice Not Required.* A notice of limited appearance is not required if the tasks to be performed by the attorney do not require the attorney to appear before the court or communicate with the court or opposing parties.

(c) *Limited Scope.* An attorney who files a notice of limited appearance is the attorney for that party for the tasks designated in the notice of limited appearance but is not the attorney for the party for tasks outside the scope of the notice.

(d) *Duration.* A limited appearance continues until the court orders that the attorney may withdraw under Rule 10 or the case is concluded in the trial court.

(e) *Service.* Service must be made on the attorney and the party in accordance with Rule 21a until the attorney withdraws from the case or the case is concluded. Service must be made on the party at the address listed for the party. Service directed to an attorney and not the party for tasks outside the scope of the notice of limited appearance is not effective.

(f) *Court notices.* Where rules require the trial court to provide written notice to the parties, the trial court must provide notice to the attorney and separately provide notice to the party at the address listed for the party.

(g) *Multiple Attorneys.* When multiple attorneys appear in the suit on behalf of a party, one attorney must make a general appearance and be designated as the attorney in charge.

Comment—2018

Consistent with Texas Disciplinary Rule of Professional Conduct 1.02(b), an attorney may limit the scope, objectives, and general methods of representation if the client consents after consultation. This rule addresses the attorney's responsibilities to the court and opposing counsel when an attorney represents a client in court for a limited purpose and no other attorney appears on behalf of the client. The rule does not otherwise define the scope or method of representation by an attorney, including preparation of court documents for a party by an attorney who is not making a court appearance, and instead leaves this to the attorney and client to address within their engagement agreement. The rule does not require an attorney to file a limited appearance unless the attorney appears in court and no other attorney appears as the attorney in charge of the suit for that party. When a party is represented by multiple attorneys in court, the party must designate one attorney to be the attorney in charge of the suit for all purposes.

Rule 10. Withdrawal and Substitution of Attorney

Rule 10.1. Withdrawal from General Appearance

(a) *Withdrawal without substitution of counsel.* An attorney may withdraw from representing a party upon written motion for good cause shown. The motion must state:

(1) the party's last known address and email address for purposes of service;

(2) that the attorney has provided the party with a copy of the motion and notified the party in writing that the party has the right to object;

(3) whether the party has consented to the motion; and

(4) all pending settings or deadlines known to counsel at the time of withdrawal, including any hearing on the motion to withdraw.

(b) *Withdrawal with substitution of counsel.* A party may substitute counsel upon written motion. The motion must state:

(1) the name, address, telephone number, email address, and State Bar of Texas identification number of the substitute attorney;

(2) that the party approves the substitution; and

(3) that the withdrawal is not sought for delay only.

(c) *Motion granted.* If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the party or substitute counsel in writing of any settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party or substitute counsel.

(d) *Multiple attorneys; withdrawal of attorney in charge.* If the attorney in charge withdraws and additional attorneys have appeared on behalf of the party, the party must give notice to the court and all other parties of the designated attorney in charge.

Rule 10.2. Withdrawal from Limited Appearance

(a) *Motion required.* An attorney seeking to withdraw from a limited appearance before the case is concluded must move to withdraw from the representation. The trial court must permit the withdrawal if the motion includes:

(1) the party's consent in writing to the withdrawal;

(2) a statement that the other parties do not oppose the motion;

(3) the last known mailing address of the party;

(4) a statement of any pending settings or deadlines of which the attorney is aware at the time of withdrawal; and

(5) the attorney's certification that all the tasks required by the notice of limited appearance have been completed, including the filing of proposed orders addressing the relief sought for any task included in the notice of limited representation.

(b) *Opposition to withdrawal.* If the motion to withdraw is opposed by any party, then the trial court must determine whether the attorney has completed the tasks included in the notice of limited representation, and if so, permit the attorney to withdraw.

(c) *Tasks not complete.* For good cause shown, the trial court may grant leave to withdraw without the attorney's certification that all tasks have been completed.

(d) *Substitution.* If a motion to withdraw includes an appearance by another attorney to substitute for the withdrawing attorney, then the motion need only state that the substituting attorney has assumed responsibility for all uncompleted tasks within the scope of the notice of limited appearance and the party has consented to the substitution. The motion must be signed by the withdrawing and the substituting attorney.

(e) *Order.* The court must not impose further conditions upon granting leave to withdraw.

(f) *Service.* The withdrawing attorney must serve a copy of the court's order permitting withdrawal on all parties.

Tab FF

Proposed Amendments to Texas Rules of Civil Procedure 8 and 10

(Subcommittee Draft ~~7/13~~9/26/18)

Rule 8. Attorney in Charge

Rule 8.1. General Appearance ~~[Current text of Rule 8]~~

(a) ~~On the occasion of a party's first appearance through counsel, the attorney~~ An attorney whose signature first appears on the initial pleadings for ~~any party shall be~~ a party is the attorney responsible for the suit for that party, unless:

(1) the initial pleadings designate another attorney as the attorney in charge~~, unless another attorney is specifically designated therein. Thereafter, until such~~; or

(2) the attorney files a notice of limited appearance under this rule.

~~(a)~~(b) Any change in the designation ~~is changed~~of the attorney in charge must be made by written notice to the court and all ~~other~~ parties ~~in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as~~ to ~~such party.~~ the suit.

~~(b)~~(c) All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.~~———————~~

~~———————~~

Rule 8.2. Limited Appearance

(a) *Notice Required.* An attorney making a limited appearance in a case on behalf of a party not otherwise represented by counsel must file

with the court a notice of limited appearance ~~with the court.~~, signed by the attorney and the party. The notice must be served on all parties to the suit. The notice must identify:

(1) the attorney making the limited appearance;

(2) the ~~issues~~party the attorney represents;

(3) the tasks for which the attorney will represent the ~~client;~~party; and

~~(3) the party the attorney represents; and~~

(4) the service information for the attorney and the party.

(b) *Notice Not Required.* A notice of limited appearance is not required if the tasks to be performed by the attorney do not require the attorney to appear before the court or communicate with the court or opposing parties.

~~(b)~~(c) *Limited Scope.* An attorney who files a notice of limited appearance is the attorney for that party for the ~~issues~~tasks designated in the notice of limited appearance but is not the attorney for ~~matters~~the party for tasks outside the scope of the notice.

~~(c)~~(d) *Duration.* A limited appearance continues until the court orders that the attorney may withdraw under Rule 10~~.2 or the case is finally concluded in the trial court. If the appearance is for a preliminary or temporary issue and the court defers its ruling, then the attorney's obligation to the court ends with the attorney's appearance at the preliminary hearing and the attorney may move to withdraw under Rule 10.2. An interim order subject to further consideration by the trial court at a later date does not extend the~~

~~attorney's obligation to the court.~~ or the case is concluded in the trial court.

~~(d)~~(e) *Service.* Service must be made on the attorney and the party in accordance with Rule 21a ~~for issues designated in~~until the ~~notice of limited appearance. For matters outside~~attorney withdraws from the ~~scope of~~case or the ~~notice of limited appearance, service~~ case is concluded. Service must be made on the party at the address listed for the party ~~on the notice of limited appearance.~~. Service directed to an attorney and not the party for ~~matters~~tasks outside the scope of the notice of limited appearance is not effective.

~~(e)~~(f) *Court notices.* Where ~~these~~ rules require the trial court to provide written notice to the parties, the trial court must provide ~~that~~ notice to the attorney and separately provide notice to the party ~~in~~at the ~~manner directed by these rules~~address listed for the party.

(g) *Multiple Attorneys.* When multiple attorneys appear in the suit on behalf of a party, one attorney must make a general appearance and be designated as the attorney in charge.

Comment—2018

Consistent with Texas Disciplinary Rule of Professional Conduct 1.02(b), an attorney may limit the scope, objectives, and general methods of representation if the client consents after consultation. This rule addresses the attorney's responsibilities to the court and opposing counsel when an attorney represents a client in court for a limited purpose~~.~~ and no other attorney appears on behalf of the client. The rule does not otherwise define the scope or method of representation by ~~a lawyer~~an attorney, including preparation of court documents for a party by an attorney who is not making a court appearance, and instead leaves this to the ~~lawyer~~attorney and client to address within their engagement agreement. The rule does not require an attorney to file a limited appearance unless the attorney appears in court and no other attorney appears as the attorney in charge of the suit for that party. When a party is represented by multiple attorneys in court, the party must designate one attorney to be the attorney in charge of the suit for all purposes.

Rule 10. Withdrawal and Substitution of Attorney

Rule 10.1. Withdrawal from General Appearance ~~[Current text~~

Withdrawal without substitution *of* ~~Rule 10]~~

(a) *counsel.* An attorney may withdraw from representing a party ~~only~~ upon written motion for good cause shown. ~~If another~~ The motion must state:

(1) the party's last known address and email address for purposes of service;

(2) that the attorney ~~is to be substituted as attorney for~~ has provided the party~~,~~ with a copy of the motion ~~shall~~and notified the party in writing that the party has the right to object;

(3) whether the party has consented to the motion; and

(4) all pending settings or deadlines known to counsel at the time of withdrawal, including any hearing on the motion to withdraw.

(b) *Withdrawal with substitution of counsel.* A party may substitute counsel upon written motion. The motion must state:

(1) the name, address, telephone number, ~~telecopier number, if any~~email address, and State Bar of Texas identification number of the substitute attorney;

(2) that the party approves the substitution; and

(3) that the withdrawal is not sought for delay only. ~~If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party~~

~~has been notified in writing of his right to object to the motion; whether the party consents to the motion; the party's last known address and all pending settings and deadlines.~~

(c) *Motion granted.* If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the party or substitute counsel in writing of any ~~additional~~ settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party~~. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail.~~ or substitute counsel.

~~(a)~~(d) *Multiple attorneys; withdrawal of attorney in charge.* If the attorney in charge withdraws and ~~another attorney remains or becomes substituted, another attorney in charge must be designated of record with~~ additional attorneys have appeared on behalf of the party, the party must give notice to the court and all other parties ~~in accordance with Rule 21a~~of the designated attorney in charge.

Rule 10.2. Withdrawal from Limited Appearance

(a) *Motion required.* An attorney seeking to withdraw from a limited appearance ~~filed under Rule 8.2~~before the case is concluded must move to withdraw from the representation. The trial court must permit the withdrawal if the motion includes:

(1) the ~~client's~~party's consent in writing to the withdrawal;

(2) a statement that the other parties do not oppose the motion;

(3) the last known mailing address of the ~~client~~party;

(4) a statement of any pending ~~trial setting~~settings or deadlines of which the attorney is aware at the time of withdrawal; and

(5) the attorney's certification that all the tasks required by the notice of limited appearance have been completed, including the filing of proposed orders addressing the relief sought for any task included in the notice of limited representation.

(b) *Opposition to withdrawal.* If the motion to withdraw is opposed by any party, then the trial court must determine whether the attorney has completed the tasks included in the notice of limited representation, and if so, permit the attorney to withdraw.

(c) *Tasks not complete.* For good cause shown, the trial court may grant leave to withdraw without the attorney's certification that all tasks have been completed.

~~(b)~~(d) *Substitution.* If a motion to withdraw includes an appearance by another attorney to substitute for the withdrawing attorney, then the motion need only state that the substituting attorney has assumed responsibility for all uncompleted ~~matters~~tasks within the scope of the

notice of limited appearance and the ~~client~~party has consented to the substitution. The motion must be signed by the withdrawing and the substituting attorney.

~~(c)~~(e) *Order.* ~~If the motion to withdraw is opposed by the client or another party, then the court must determine whether the attorney has fulfilled the attorney's responsibilities to the court for matters included in the notice of limited representation, and if so, permit the attorney to withdraw.~~ The court must not impose further conditions upon granting leave to withdraw.

~~(d)~~(f) *Service.* The withdrawing attorney must serve a copy of the court's order permitting withdrawal on all parties.

Tab GG

Rule 8.2. Limited Appearance

Limited Scope Not Permitted. An attorney shall not limit the scope of the attorney's representation to less than all tasks necessary, during a pre-trial hearing for temporary relief or final trial, to prosecute or defend all claims joined for hearing or trial under the Texas Family Code.

Tab HH

From: Frank Gilstrap

To: Stephen Yelenosky, Lamont Jefferson, Pete Schenkkan

Date: June 11, 2018

Re: Cyberbullying

Here are the docs attached to the December 2017 agenda together with the statute. I haven't seen any indication that this difficult item has been withdrawn. Do we want to take a final look before the July meeting? I'm hesitant to dive in if the consensus is to go with what we've got. Nevertheless, I have a few comments

The Instructions:

(1) We start out talking about the "Petition" on pages 1 and 2, but we end up talking about the "Application" on pages 3 and 4.

(2) The statute says that the TRO and TI order do not have to set a trial date, thereby overruling Rule 683. *See* TEX.CIV.PRAC. & REM. CODE §129A.002(e). But the statute says nothing about the TI hearing, and Rule 680 and—certainly--due process require a TI hearing. The instructions barely mention this saying only that "you will have to have another hearing with the other parent or person present if you want additional orders" Instructions, p.3. There needs to be a clear warning that an evidentiary hearing will be required. Also, page 4 tells the petitioner that, if the TRO is

denied, he will have to decide whether to continue the suit. We should also tell him that, if he doesn't want to continue, he will have to take action to dismiss the suit. The current instructions could give the impression that if he does nothing, the suit will automatically go away/

(3) The instructions say that cyberbullying includes "threatening to use" the phone or internet. See instructions, p.1. In general, an injunction can be used to prevent "threatened" harm. But our statute is only available to "the recipient" of cyberbullying behavior. *See* TEX.CIV.PRAC. & REM. CODE §129A.002(a). If cyberbullying has only been "threatened" the plaintiff is not yet a "recipient" and the statute does not apply. Similarly, the court may grant injunctive relief "to prevent any further cyberbullying." *Id.* §129A.002(b). And the plaintiff may obtain relief by "showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient." *Id.* §129A.002(c).

The Petition:

The statute contemplates four different scenarios depending on the age of the victim and the age of the bully at the time suit is filed:

(1) When both the victim and the bully are minors, then the parent of the victim sues the parent of the bully.

(2) When the victim has turned 18 and the bully is still a minor, the victim sues the parent of the bully.

(3) When the victim is still a minor and the bully is over 18 then the parent of the victim sues the bully.

(4) When the victim has turned 18, and the bully is over 18, then the victim sues the bully.

This is complicated. When I sit down and try to fill out the Petition under each of the above scenarios, I grow somewhat confused. Maybe we need two forms: one for scenarios 1 and 3 and another for scenarios 2 and 4. The first is filled out by the parent. The second is filled out by the victim who has turned 18.

At any rate, the current petition could use some work. For example, instead of saying "Check the appropriate box" it could say "check one of the boxes below."

Tab II

THIS FORM IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY

NO. _____

In re _____	§ § § § § § §	IN THE _____ COURT OF _____ COUNTY, TEXAS

PETITION FOR A CYBERBULLYING RESTRAINING ORDER

ADULT APPLYING FOR THE ORDER

Name: _____

I am the parent or a person in a parental relationship* to _____ who is under 18 years of age.

Address: _____

_____

County: _____

**If you are not a parent but instead a person in a parental relationship to the child, you must describe that relationship in your Declaration.*

ADULT(S) THE ORDER WOULD RESTRAIN

Name: _____

CHECK THE APPROPRIATE BOX & FILL IN THE CHILD'S NAME IF YOU CHECK THE FIRST BOX

☐ This is a parent of, or a person in a parental relationship to, _____, who I believe is under 18 years old and has cyberbullied or threatened to cyberbully my child.

☐ This is an adult who has cyberbullied or threatened to cyberbully my child

Address: _____

_____ Zip code: _____

County: _____

If you want to ask for an order against another parent or other adult, add the information about the second adult below.

Name: _____

CHECK THE APPROPRIATE BOX & FILL IN THE CHILD'S NAME & AGE IF YOU CHECK THE FIRST BOX

☐This is a parent of, or a person in a parental relationship to, _____, who I believe is under 18 years old and has cyberbullied or threatened to cyberbully my child.

☐This is an adult who has cyberbullied or threatened to cyberbully my child

Address: _____

_____ Zip code: _____

County: _____

GROUNDS FOR A RESTRAINING ORDER

CHECK THE APPROPRIATE BOX

☐Based on the information I have provided in my attached Declaration Under Penalty of Perjury the child named above has committed or has threatened to commit cyberbullying of my child. I have reason to believe the adult named above is a parent or person in a parental relationship to the child named above. If I have filled in a second responsible adult, I have reason to believe the same of that person.

☐Based on the information I have provided in my attached Declaration Under Penalty of Perjury the adult I named above has committed or has threatened to commit cyberbullying of my child.

REQUEST FOR A RESTRAINING ORDER

I request that the Court issue a temporary restraining order as soon as possible without waiting for this Application and Declaration to be delivered to the parent or person in a parental relationship to the child or to the adult I say has committed or has threatened to commit cyberbullying of my child or ward. I also request that the Court issue a permanent restraining order after the Application and Declaration have been delivered, the parent or other person responsible for the child has had an opportunity to file a written response, a final hearing has been scheduled and notice of it given, and a final hearing has been held.

FEES AND COSTS

I request that the Court order the responsible adults listed above to pay all court fees and to reimburse me for any fees I have already paid.

REQUEST THAT RECORD BE SEALED

To protect the privacy of my child, I request that the Court issue an order sealing all documents filed with the clerk that legally may be sealed.

Respectfully Submitted,

_____

APPLICANT

Declaration Under Penalty of Perjury

I am seeking a Cyberbullying Protective Order because:

_____

_____

_____

_____

_____

_____

_____

_____

_____

My name is _____ _____ _____, my date of
(First) (Middle) (Last)

birth is _____, and my address is _____
(Number & Street)

_____, _____, _____, and _____.
(City) (State) (Zip code) (Country)

I declare under penalty of perjury that my declaration above is true and correct.

Signed in _____ County, State of _____, on _____.
Date

_____
Signature of Person Making Declaration

Tab JJ

Instructions for Petition for a Cyberbullying Restraining Order

What is "cyberbullying"?

"Cyberbullying" is harassment of one student by another student (1) using, or threatening to use, a phone or the Internet, (2) the bullied student is a minor at the time of the harassment, and (3) the harassment is related to school or affects the bullied student's education.

A "student" is someone enrolled in public or private school or being home-schooled, and a "minor" is someone under 18 years of age. The Internet includes, for example, text messages, instant messages, email, postings on social media, and photographs posted on a web page. For anyone not covered by the cyberbullying law, there might be another law that offers some protection. You will have to consult a lawyer about that.

What is a "restraining order"?

A "restraining order" is a document signed by a judge instructing a person to stop doing something that may violate someone else's rights. The restraining order is "served," which means delivered in-hand by an authorized person. A person who violates a restraining order may be subject to the judge's power to enforce the order.

What is the Petition?

The Petition is a request for a court order to stop cyberbullying. It starts a civil lawsuit. Anytime a lawsuit is filed, the person sued might be able to use it to sue you back. Whether the judge grants or denies your request for a restraining order to stop cyberbullying, the lawsuit might continue because you ask for further orders or the person you sued wants to continue the suit.

The Petition is *not* a criminal complaint. It also cannot be used to sue an Internet service provider, such as Facebook, or a library or a school.

Instructions for Petition for a Cyberbullying Restraining Order

Who can complete and sign the Petition?

You do not have to hire a lawyer, but you should if you can. Whether you hire a lawyer or not, anyone you sue might hire a lawyer.

If the bullied student is a minor, only a parent of the minor or a person acting as a parent to the minor can complete and sign the Petition. A person acting as a parent may be a legal guardian or, for example, a grandparent who is raising the minor.

If the bullied student has reached the age of 18, he or she must complete and sign the Petition and Declaration.

Does the age of the *cyberbully* matter?

The law applies to a cyberbully of any age as long as he or she was a student *at the time of the cyberbullying*.

The Petition, however, differs based on the age of the cyberbully *at the time you file the Petition*. If the cyberbully is a minor when you file the Petition, you must sue one or both of his parents or a person acting as a parent to the cyberbully. If the cyberbully is 18 or older at the time you file your Petition, you must sue the cyberbully himself or herself. The Petition itself guides you in completing it for a cyberbully who is a minor and for a cyberbully who is 18 or older.

Completing and signing the Petition and Declaration

Fill in the information requested in the Petition for a Cyberbullying Restraining Order and sign it. Along with the Petition you must write a Declaration in your own words describing what the cyberbully did and how it hurt your child, or how it hurt you if you were the one bullied and are now 18 or older. You must sign “under penalty of perjury,” which means you can be prosecuted for perjury if you purposely give false information.

Instructions for Petition for a Cyberbullying Restraining Order

The Petition and Declaration will be public

Before you file a Petition and Declaration, be aware that all documents filed with the clerk are public records available to anyone who requests them from the clerk. The documents may also be available through the clerk's web site. When you see a judge, you can ask the judge to make the document unavailable to the public. Even a judge cannot make some documents confidential, like orders of the court. And the courtroom is open to the public.

Where to file the Petition

You or someone acting on your behalf must deliver the Petition and Declaration to the clerk of the county or state district court where you live for filing. The court clerk can explain the next step in the process, but the clerk cannot give you legal advice or tell you what a judge might do in your case.

Is there a charge to file the Petition?

When you file the Petition, you are required to pay the standard fee charged by the county in which you file. You should find out the amount of the fee and whether you can pay by cash, check or credit card by calling the clerk of the court. If you believe the filing fee should be waived because of your income, ask the clerk how you can get the paperwork you will need to file. A request for a waiver cannot be made over the phone. It must be made in writing and under oath.

What happens after you file the Petition and Declaration?

When you file your Petition and Declaration ask the clerk to explain the next steps. Different courthouses have different procedures for these Petitions. In some courthouses at the time you file the clerk may tell you wait to see a judge or to return at another time. In others you may have to talk to other courthouse staff or the judge's staff. Whatever the procedure, in every courthouse a judge has the final word on when you will go before the judge.

Why you might have to wait to see a judge

Instructions for
Petition for a Cyberbullying Restraining Order

Holding any type of court proceeding without the other person even knowing about it is rare because in our system of justice every person is entitled to explain his or her side of the story. The judge has to consider whether your Petition is so urgent that an exception should be made.

You may be required to testify under oath

You may be required to testify in court under oath, which means you can be prosecuted for perjury if you purposely give false information.

If the judge grants the order, when is it effective and how long does it last?

The order is effective as soon as the person restrained by the order receives a copy of it. If the judge grants you an order without notice to the other side of the case, it will be in effect for only two weeks. During those two weeks you or your attorney can talk with the other child's parents, and you may reach an agreement that ends the case without going to court again. If you don't reach an agreement, to continue your case you will have to set a hearing and notify the other parent. At this hearing, the court will require you and the other parent to testify under oath. If the court grants an order, the judge decides how long it will be effective.

What if the judge denies my Petition?

When you first go to court the judge will not issue a final order. If the judge denies your Petition at this first proceeding, you will have to decide whether to continue the case. These instructions cannot and do not provide any guidance on whether or how to do that.

Tab KK

Section 11 of Statute relating to Cyberbullying and other statutory provisions it incorporates by reference

Title 6, **Civil Practice and Remedies Code**, is amended by **adding Chapter 129A** to read as follows: T. 6 Ch. 129A

CHAPTER 129A. **RELIEF FOR CYBERBULLYING OF CHILD**

Sec. 129A.001.

DEFINITION. In this chapter, "cyberbullying" has the meaning assigned by Section 37.0832 (a), **Education Code**.

----------[the referenced provision of Education Code is inserted below]------

Texas Education Code § 37.0832

(a) In this section:

(1) “Bullying”:

(A) means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1), and that:

(i) has the effect or will have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property;

(ii) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

(iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

(iv) infringes on the rights of the victim at school; and

(B) includes cyberbullying.

(2) “Cyberbullying” means bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging,

a social media application, an Internet website, or any other Internet-based communication tool.

(a-1) This section applies to:

(1) bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property;

(2) bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and

(3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

(A) interferes with a student's educational opportunities; or

(B) substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

----------[end of inserted section of Education Code]----------

Sec. 129A.002. **INJUNCTIVE RELIEF**.

(a) A recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying occurs or a parent of or person standing in parental relation to the recipient may seek injunctive relief under this chapter against the individual who was cyberbullying the recipient or, if the individual is younger than 18 years of age, against a parent of or person standing in parental relation to the individual.

(b) A court may issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further cyberbullying, including an order or injunction:

(1) enjoining a defendant from engaging in cyberbullying; or

(2) compelling a defendant who is a parent of or person standing in parental relation to an Iindividual who is younger than 18 years of age to take reasonable actions to cause the individual to cease engaging in cyberbullying.

(c) A plaintiff in an action for injunctive relief brought under this section is entitled to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient. The plaintiff is not required to plead or prove that, before notice can be served and a hearing can be held, immediate and irreparable injury, loss, or damage is likely to result from past or future

cyberbullying by the individual against the recipient.

(d) A plaintiff is entitled to a temporary or permanent injunction under this section on showing that the individual was cyberbullying the recipient.

(e) A court granting a temporary restraining order or temporary injunction under this section may, on motion of either party or sua sponte, order the preservation of any relevant electronic communication. The temporary restraining order or temporary injunction is not required to:
(1) define the injury or state why it is irreparable;
(2) state why the order was granted without notice; or
(3) include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

Sec. 129A.003. **PROMULGATION OF FORMS.**

(a) The supreme court shall, as the court finds appropriate, promulgate forms for use as an application for initial injunctive relief by individuals representing themselves in suits involving cyberbullying and instructions for the proper use of each form or set of forms.

(b) The forms and instructions:

(1) must be written in language that is easily understood by the general public;
(2) shall be made readily available to the general public in the manner prescribed by the supreme court; and
(3) must be translated into the Spanish language.
(c) The Spanish language translation of a form must:
(1) state:
(A) that the Spanish language translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court; and
(B) that the English language version of the form must be submitted to the court; or

(2) be incorporated into the English language version of the form in a manner that is understandable to both the court and members of the general public.

(d) Each form and its instructions must clearly and conspicuously state that the form is not a substitute for the advice of an attorney.

Section 11 of Statute relating to Cyberbullying and other statutory provisions it incorporates by reference

(e) The attorney general and the clerk of a court shall inform members of the general public of the availability of a form promulgated by the supreme court under this section as appropriate and make the form available free of charge.

(f) A court shall accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

Sec. 129A.004. **INAPPLICABILITY.**

(a) An action filed under this chapter may not be joined with an action filed under Title 1,4, or 5, Family Code.

(b) Chapter 27 does not apply to an action under this chapter.
[Chapter 27 of the TCPRC is the "anti-SLAPP" statute.]

Sec. 129A.005 **Certain Conduct Excepted**

This chapter does not apply to a claim brought against an interactive computer service, as defined by **47 U.S.C. Section 230**, for cyberbullying.

----------[**47 U.S.C.A. § 230** (West) inserted below]----------

(2) Interactive computer service
The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

Tab LL

AN ACT

relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students; increasing a criminal penalty.

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

SECTION 1. This Act shall be known as David's Law.

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a) and (c) and adding Subsections (a-1) and (f) to read as follows:

(a) In this section:

(1) "Bullying":

(A) [~~, "bullying"~~] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves[~~, subject to Subsection (b),~~] engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1), [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district~~] and that:

(i) [~~(1)~~] has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

(ii) [~~(2)~~] is sufficiently severe, persistent, or [~~and~~] pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

(iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

(iv) infringes on the rights of the victim at school; and

(B) includes cyberbullying.

(2) "Cyberbullying" means bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool.

(a-1) This section applies to:

(1) bullying that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity on or off school property;

(2) bullying that occurs on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity; and

(3) cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

(A) interferes with a student's educational opportunities; or

(B) substantially disrupts the orderly operation of a classroom, school, or school-sponsored or school-related activity.

(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:

(1) prohibits the bullying of a student;

(2) prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;

(3) establishes a procedure for providing notice of an incident of bullying to:

(A) a parent or guardian of the alleged victim on or before the third business day after the date the incident is reported; and

(B) a parent or guardian of the alleged bully within a reasonable amount of time after the incident;

(4) establishes the actions a student should take to obtain assistance and intervention in response to bullying;

(5) sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;

(6) establishes procedures for reporting an incident of bullying, including procedures for a student to anonymously report an incident of bullying, investigating a reported incident

of bullying, and determining whether the reported incident of bullying occurred;

(7) prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and

(8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(f) Each school district may establish a district-wide policy to assist in the prevention and mediation of bullying incidents between students that:

(1) interfere with a student's educational opportunities; or

(2) substantially disrupt the orderly operation of a classroom, school, or school-sponsored or school-related activity.

SECTION 3. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0052 to read as follows:

Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

(1) "Bullying" has the meaning assigned by Section 37.0832.

(2) "Intimate visual material" has the meaning assigned by Section 98B.001, Civil Practice and Remedies Code.

(b) A student may be removed from class and placed in a disciplinary alternative education program as provided by Section

37.008 or expelled if the student:

(1) engages in bullying that encourages a student to commit or attempt to commit suicide;

(2) incites violence against a student through group bullying; or

(3) releases or threatens to release intimate visual material of a minor or a student who is 18 years of age or older without the student's consent.

(c) Nothing in this section exempts a school from reporting a finding of intimate visual material of a minor.

SECTION 4. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0151 to read as follows:

Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a) The principal of a public primary or secondary school, or a person designated by the principal under Subsection (c), may make a report to any school district police department, if applicable, or the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if, after an investigation is completed, the principal has reasonable grounds to believe that a student engaged in conduct that constitutes an offense under Section 22.01 or 42.07(a)(7), Penal Code.

(b) A person who makes a report under this section may include the name and address of each student the person believes may have participated in the conduct.

(c) The principal of a public primary or secondary school

may designate a school employee, other than a school counselor, who is under the supervision of the principal to make the report under this section.

(d) A person who is not a school employee but is employed by an entity that contracts with a district or school to use school property is not required to make a report under this section and may not be designated by the principal of a public primary or secondary school to make a report. A person who voluntarily makes a report under this section is immune from civil or criminal liability.

(e) A person who takes any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action.

(f) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act under this section.

(g) A school district and school personnel and school volunteers are immune from suit resulting from an act under this section, including an act under related policies and procedures.

(h) An act by school personnel or a school volunteer under this section, including an act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the school district or the district's employees.

SECTION 5. Sections 37.218(a)(1) and (2), Education Code,

are amended to read as follows:

(1) "Bullying" has the meaning assigned by Section 37.0832 [~~25.0342~~].

(2) "Cyberbullying" has the meaning assigned by Section 37.0832 [~~means the use of any electronic communication device to engage in bullying or intimidation~~].

SECTION 6. Section 5.001, Education Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Mental health condition" means an illness, disease, or disorder, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

SECTION 7. Section 12.104(b), Education Code, is amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C,

Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) accelerated instruction under Section 28.0211;

(E) high school graduation requirements under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E or E-1, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, E, F, G, and J, Chapter 39;

(M) the requirement under Section 21.006 to report an educator's misconduct;

(N) intensive programs of instruction under Section 28.0213; [~~and~~]

(O) the right of a school employee to report a crime, as provided by Section 37.148;

(P) bullying prevention policies and procedures

under Section 37.0832;

(Q) the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student; and

(R) the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment.

SECTION 8. Section 21.054, Education Code, is amended by adding Subsections (d-2) and (e-2) to read as follows:

(d-2) Continuing education requirements for a classroom teacher may include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

(e-2) Continuing education requirements for a principal may include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

SECTION 9. Subchapter J, Chapter 21, Education Code, is amended by adding Section 21.462 to read as follows:

Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL HEALTH NEEDS. The agency, in coordination with the Health and Human Services Commission, shall establish and maintain an Internet website to provide resources for school district or open-enrollment charter school employees regarding working with students with

mental health conditions. The agency must include on the Internet website information about:

(1) grief-informed and trauma-informed practices;

(2) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(3) positive behavior interventions and supports; and

(4) a safe and supportive school climate.

SECTION 10. Section 33.006, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) In addition to a school counselor's responsibility under Subsection (a), the school counselor shall:

(1) participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students:

(A) who are at risk of dropping out of school, becoming substance abusers, participating in gang activity, or committing suicide;

(B) who are in need of modified instructional strategies; or

(C) who are gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged;

(2) consult with a student's parent or guardian and make referrals as appropriate in consultation with the student's parent or guardian;

(3) consult with school staff, parents, and other community members to help them increase the effectiveness of student education and promote student success;

(4) coordinate people and resources in the school, home, and community;

(5) with the assistance of school staff, interpret standardized test results and other assessment data that help a student make educational and career plans; [~~and~~]

(6) deliver classroom guidance activities or serve as a consultant to teachers conducting lessons based on the school's guidance curriculum; and

(7) serve as an impartial, nonreporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying under Section 37.0832.

(c) Nothing in Subsection (b)(7) exempts a school counselor from any mandatory reporting requirements imposed by other provisions of law.

SECTION 11. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 129A to read as follows:

CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

Sec. 129A.001. DEFINITION. In this chapter, "cyberbullying" has the meaning assigned by Section 37.0832(a), Education Code.

Sec. 129A.002. INJUNCTIVE RELIEF. (a) A recipient of cyberbullying behavior who is younger than 18 years of age at the time the cyberbullying occurs or a parent of or person standing in parental relation to the recipient may seek injunctive relief under

this chapter against the individual who was cyberbullying the recipient or, if the individual is younger than 18 years of age, against a parent of or person standing in parental relation to the individual.

(b) A court may issue a temporary restraining order, temporary injunction, or permanent injunction appropriate under the circumstances to prevent any further cyberbullying, including an order or injunction:

(1) enjoining a defendant from engaging in cyberbullying; or

(2) compelling a defendant who is a parent of or person standing in parental relation to an individual who is younger than 18 years of age to take reasonable actions to cause the individual to cease engaging in cyberbullying.

(c) A plaintiff in an action for injunctive relief brought under this section is entitled to a temporary restraining order on showing that the plaintiff is likely to succeed in establishing that the individual was cyberbullying the recipient. The plaintiff is not required to plead or prove that, before notice can be served and a hearing can be held, immediate and irreparable injury, loss, or damage is likely to result from past or future cyberbullying by the individual against the recipient.

(d) A plaintiff is entitled to a temporary or permanent injunction under this section on showing that the individual was cyberbullying the recipient.

(e) A court granting a temporary restraining order or temporary injunction under this section may, on motion of either

party or sua sponte, order the preservation of any relevant electronic communication. The temporary restraining order or temporary injunction is not required to:

(1) define the injury or state why it is irreparable;

(2) state why the order was granted without notice; or

(3) include an order setting the cause for trial on the merits with respect to the ultimate relief requested.

Sec. 129A.003. PROMULGATION OF FORMS. (a) The supreme court shall, as the court finds appropriate, promulgate forms for use as an application for initial injunctive relief by individuals representing themselves in suits involving cyberbullying and instructions for the proper use of each form or set of forms.

(b) The forms and instructions:

(1) must be written in language that is easily understood by the general public;

(2) shall be made readily available to the general public in the manner prescribed by the supreme court; and

(3) must be translated into the Spanish language.

(c) The Spanish language translation of a form must:

(1) state:

(A) that the Spanish language translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court; and

(B) that the English language version of the form must be submitted to the court; or

(2) be incorporated into the English language version of the form in a manner that is understandable to both the court and

members of the general public.

(d) Each form and its instructions must clearly and conspicuously state that the form is not a substitute for the advice of an attorney.

(e) The attorney general and the clerk of a court shall inform members of the general public of the availability of a form promulgated by the supreme court under this section as appropriate and make the form available free of charge.

(f) A court shall accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

Sec. 129A.004. INAPPLICABILITY. (a) An action filed under this chapter may not be joined with an action filed under Title 1, 4, or 5, Family Code.

(b) Chapter 27 does not apply to an action under this chapter.

Sec. 129A.005. CERTAIN CONDUCT EXCEPTED. This chapter does not apply to a claim brought against an interactive computer service, as defined by 47 U.S.C. Section 230, for cyberbullying.

SECTION 12. Sections 161.325(a-1), (d), (e), (f), and (i), Health and Safety Code, are amended to read as follows:

(a-1) The list must include programs in the following areas:

(1) early mental health intervention;

(2) mental health promotion [~~and positive youth development~~];

(3) substance abuse prevention;

(4) substance abuse intervention; [~~and~~]

(5) suicide prevention;

(6) grief-informed and trauma-informed practices;

(7) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(8) positive behavior interventions and supports and positive youth development; and

(9) safe and supportive school climate.

(d) A [~~The board of trustees of each~~] school district may develop practices and procedures [~~may adopt a policy~~] concerning each area listed in Subsection (a-1), including mental health promotion and intervention, substance abuse prevention and intervention, and suicide prevention, that:

(1) include [~~establishes~~] a procedure for providing notice of a recommendation for early mental health or substance abuse intervention regarding a student to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(2) include [~~establishes~~] a procedure for providing notice of a student identified as at risk of committing suicide to a parent or guardian of the student within a reasonable amount of time after the identification of early warning signs as described by Subsection (b)(2);

(3) establish [~~establishes~~] that the district may develop a reporting mechanism and may designate at least one person to act as a liaison officer in the district for the purposes of

identifying students in need of early mental health or substance abuse intervention or suicide prevention; and

(4) set [~~sets~~] out available counseling alternatives for a parent or guardian to consider when their child is identified as possibly being in need of early mental health or substance abuse intervention or suicide prevention.

(e) The practices and procedures developed under Subsection (d) [~~policy~~] must prohibit the use without the prior consent of a student's parent or guardian of a medical screening of the student as part of the process of identifying whether the student is possibly in need of early mental health or substance abuse intervention or suicide prevention.

(f) The practices [~~policy~~] and [~~any necessary~~] procedures developed [~~adopted~~] under Subsection (d) must be included in:

(1) the annual student handbook; and

(2) the district improvement plan under Section 11.252, Education Code.

(i) Nothing in this section is intended to interfere with the rights of parents or guardians and the decision-making regarding the best interest of the child. Practices [~~Policy~~] and procedures developed [~~adopted~~] in accordance with this section are intended to notify a parent or guardian of a need for mental health or substance abuse intervention so that a parent or guardian may take appropriate action. Nothing in this section shall be construed as giving school districts the authority to prescribe medications. Any and all medical decisions are to be made by a parent or guardian of a student.

SECTION 13. Section 42.07(b)(1), Penal Code, is amended to read as follows:

(1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated through the use of [~~by~~] electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine; and

(B) a communication made to a pager.

SECTION 14. Section 42.07(c), Penal Code, is amended to read as follows:

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section; or

(2) the offense was committed under Subsection (a)(7) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide; or

(ii) engage in conduct causing serious bodily injury to the child; or

(B) the actor has previously violated a temporary

restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

SECTION 15. Section 37.0832(b), Education Code, is repealed.

SECTION 16. The change in law made by this Act applies only to an offense committed or conduct violating a penal law of this state that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is governed by the law in effect on the date the offense was committed or conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed or conduct violating a penal law of this state occurred before the effective date of this Act if any element of the offense or conduct occurred before that date.

SECTION 17. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 18. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 179 passed the Senate on May 3, 2017, by the following vote: Yeas 31, Nays 0; May 17, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 19, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 179 passed the House, with amendments, on May 12, 2017, by the following vote: Yeas 130, Nays 11, one present not voting; May 19, 2017, House granted request of the Senate for appointment of Conference Committee; May 27, 2017, House adopted Conference Committee Report by the following vote: Yeas 136, Nays 11, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Tab MM

Constitutional Precedents on Student Speech

From *Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 507 (5th Cir. 2009).

The Supreme Court has issued four major opinions on public school regulation of student speech. First, in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), a public school punished students who wore black armbands to school to protest the Vietnam War. *Id*. at 504. The Court confirmed that "students [do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *id*. at 506, and "[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." *Id*. at 511. Schools can restrict student speech only if it materially interferes with or disrupts the school's operation, id. at 512, and cannot "suppress 'expressions of feelings with which they do not wish to contend.' " *Id*. at 511 (citing *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir.1966)).

Since *Tinker*, every Supreme Court decision looking at student speech has expanded the kinds of speech schools can regulate. In *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 687(1986), the Court ruled that schools can prohibit "sexually explicit, indecent, or lewd speech." The Court held in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988), that schools can also regulate school-sponsored speech.

Finally, in *Morse v. Frederick*, 551 U.S. 393 (2007), the Court determined that schools can prohibit "[s]peech advocating illegal drug use." Id. at 2638 (Alito, J., concurring).

Palmer argues that under these decision, he wins on the merits. Reading *Tinker, Fraser, Hazelwood*, and *Morse* together, Palmer believes the Court has established a bright-line rule that schools cannot restrict speech that is not disruptive, lewd, school-sponsored, or drug-related. If this were the rule, Palmer indeed would prevail, because the District has stipulated that his shirts do not fall into any of these categories. Palmer's proposed categorical rule, however, is flawed, because it fails to include another type of student speech restriction that schools can institute: content-neutral regulations." [In this case the court upheld the constitutionality of a dress code that disallowed wording on T-shirts except for small logos and school-sponsored shirts.]