

Appointments and Fees – Chapter 36, Government Code

Frequently Asked Questions

District and County Courts

Who?

1. Which courts need to report the information required by Chapter 36?

All courts must submit a report each month, even if there is no reportable activity.

2. My court does not make appointments. Do I have to report?

Yes. Courts with no activity to report must submit “No Activity” reports each month.

When?

1. When do I need to start reporting this information?

The requirements of Chapter 36 go into effect on **September 1, 2016**. The first report, for September, is due October 15.

2. The date of appointment and the date of fee approval (or date of payment, if amount of fee is not known at time of approval) are different. When do we report the information?

A report for all appointments made during the month and a report for all payments made during the month are required, so the appointment will be reported in the month that it is made and the fee approval (or payment) will be reported separately in the month it was approved (or payment was made).

3. Chapter 36 requires the date of the order approving compensation to be reported but also the total amount of compensation paid to the appointee. The date of the order approving compensation and the date of payment are different. Which date should I use?

The date of the order approving compensation. If the amount of compensation was not specified when the approval order was signed, use the date of payment.

4. Courts prepare vouchers to pay attorneys/mediators on a quarterly basis, so I (the clerk) cannot accurately report correct amounts for each month. What should I do?

The fees should be reported when the court approves the compensation. In this case, the fees would be reported on a quarterly basis but not in those months in which no fees were approved.

What?

1. Will the information required by Supreme Court Order 07-9188 still need to be reported?

No. The Court decided to rescind its order on August 26, 2016. As a result, the requirement to report all appointments and all fees paid in any civil case under Sec. 171.9(a)(2) is no longer applicable and will likely be repealed by Judicial Council in October.

The only reporting requirement that will remain in place is **Chapter 36** of the Government Code (created by Senate Bill 1369). However, **counties that wish to continue reporting the information previously required under the Supreme Court order are welcome to do so.**

2. Do CPS cases need to be reported?

Yes. The requirements of SB 1369 apply to CPS cases. The exceptions are:

- a guardian ad litem or other person appointed under a program authorized by Sec. 107.031, Family Code (volunteer advocates in child protection cases) or
- an attorney ad litem, guardian ad litem, amicus attorney or mediator appointed under a domestic relations office established under Chapter 203, Family Code.

3. Do appointments in parental notification/judicial bypass cases need to be reported?

Information on parental notification/judicial bypass cases should NOT be reported. This information is confidential and is exempted from the reporting requirements. (“The reporting requirements...do not apply to...information made confidential under state or federal law, including applicable rules.”)

4. Do cases sealed or made confidential by local rule need to be reported?

Yes. The statute only exempts cases made confidential by state or federal law. The case number and style must be included in the report. As a result, **judges and clerks should use their discretion regarding the style of the case.**

5. Do mental health cases need to be reported? If so, does the case number and style need to be reported?

Yes, mental health cases need to be reported. The case number and style **do** need to be reported, and this information will be available to the public. As a result, **judges and clerks should use their discretion regarding the style of the case.**

6. Do appointments of attorneys for indigency in criminal or juvenile cases need to be reported?

No. Those are all being reported to the Texas Indigent Defense Commission.

7. Do appointments of mental health professionals whose function is to determine: (1) the competency of a defendant/respondent to stand trial in a criminal/juvenile case and/or (2) the sanity of a defendant/respondent in a criminal/juvenile case need to be reported?

No. Only appointments of a physician or psychologist who performs examinations to determine whether an individual is incapacitated or has an intellectual disability for purposes of appointing a guardian for the individual need to be reported.

8. Do cases in which fees are paid from sources other than county funds (“private pay” cases) have to be reported?

Yes. The source of funds is irrelevant for purposes of determining whether to report an appointment.

9. Chapter 36 requires us to report the total amount of compensation “paid” to an appointee. Actual payment information is not readily available to the clerk, court or county auditor/treasurer, particularly when it involves private parties. In addition, in some cases the responsible party does not satisfy the obligation. What are we to report?

The amount of compensation **approved** by the court is the amount that should be reported.

Summary – What? Questions 1 through 9

Subject		
Attorneys for indigency in criminal or juvenile cases	No	These are already reported to the Texas Indigent Defense Commission
Child protection cases	Yes	Exceptions: <ul style="list-style-type: none"> • guardian ad litem/other appointee under a program authorized by Sec. 107.031, Family Code (volunteer advocates in child protection cases) or • attorney ad litem, guardian ad litem, amicus attorney or mediator appointed under a domestic relations office established under Chapter 203, Family Code
Fees in “private pay” cases; fees from sources other than County funds	Yes	
Judicial bypass/parental notification	No	
Mental health cases	Yes	Discretion should be used regarding the style of the case to protect confidentiality
Mental health professionals determining competency of defendant/respondent in criminal/juvenile case	No	
Payments made to appointees	No	The amount of compensation approved by the court should be reported, unless the amount of compensation was not specified when the approval order was signed.
Sealed/made confidential by local rule	Yes	The statute only exempts cases made confidential by state or federal law. The case number and style must be included in the report; however, judges/clerks may use their discretion regarding the content of the style of the case.
Supreme Court Order 07-9188 requirements	No.	However, counties that wish to continue reporting the information previously required under the Supreme Court order are welcome to do so.

10. Is a report required in the following scenarios involving mediators?

A. Civil and family cases: local rules mandate mediation for nearly all cases and county/court does not maintain list of mediators

No. The intent of Chapter 36 of the Government Code is to capture data regarding the appointment/selection of persons by the courts to positions in which they will receive a fee. In this scenario the court does not control or determine who the parties will use. Therefore, neither the name of the mediator selected independently by the parties nor the fee paid to the mediator has to be reported.

B. Cases in which parties cannot agree on a mediator and the judge selects and appoints the mediator to serve in a case

Yes. In this scenario the court is selecting the person who will provide mediation services. This must be reported even if the mediator will be paid by the parties. Also, the parties should report to the court the fee that is paid to the mediator. It is recommended that the appointment order require that fee information be reported to the court so that the court clerk can comply with the requirements of Chapter 36.

C. Cases in which a mediator is selected by agreement of the parties

Chapter 36 of the Government Code requires courts to report the names of mediators “appointed” by the court. If the court orders mediation but has no involvement in the selection of the mediator and does not sign an order “appointing” a specific mediator, the selection of a mediator by the parties does not have to be reported. It is within the judge’s discretion to determine if an agreed order signed by the judge approving the selection of the parties’ choice for mediator is an “appointment” for purposes of reporting.

D. CPS cases: judge authorizes mediation (does not order or appoint) that the county pays for; district attorney maintains the list of mediators and assigns the case to a mediator

Yes, if the parties do not actually agree on a mediator. In this scenario, though the court does not make the appointment, it appears that there is a list maintained by the district attorney’s office and that the assignment of a mediator is made by the district attorney’s office. Since the list is maintained by the district attorney’s office and the selection is in the control of that office, a person selected from this list would not truly be a mediator agreed to by the parties. This assignment and any compensation should be reported.

If the list maintained by the district attorney’s office is simply a list of all mediators who have agreed to mediate these types of cases and the parents involved in the CPS case or their attorney are involved in the selection of the mediator, this assignment would not have to be reported.

Summary – Question 10

Mediators

Report When



- ✓ Parties **don't agree** on mediator, judge selects and appoints mediator
- ✓ Judge authorizes mediation but assignment of mediator handled by another party (e.g., district attorney's office) and parties **have no say** in selection of mediator
- ✓ In any of these situations, **any fees approved/paid, including fees from sources other than County funds**

Mediators

Do Not Report When

- × **Local rules mandate mediation** for nearly all cases & county/court **does not maintain list** of mediators
- × Parties **agree** on mediator, judge may sign agreed/appointment order but **does not** select mediator
- × Judge authorizes mediation but assignment of mediator handled by another entity (e.g., district attorney's office) and parties **have say** in selection of mediator and **agree** on mediator



11. Is a report required in the following scenarios involving attorneys ad litem and guardians ad litem?

- A. In cases dealing with private parties, if the parties agree on an individual to serve as attorney ad litem, and the court signs an Agreed Order approving the parties' agreement, is there any reporting requirement if those fees are paid exclusively by the parties?

If the court does not make an appointment from the Chapter 37 appointment list and has no involvement in the selection of the attorney ad litem and the judge does not sign an order "appointing" a specific attorney ad litem, the selection of an attorney ad litem by the parties does not have to be reported. It is within the judge's discretion to determine if an agreed order signed by the judge approving the selection of the parties' choice as attorney ad litem is an "appointment" for purposes of reporting.

- B. Our county has a contract with a law firm or specific individuals to provide legal services for a set monthly/annual fee regardless of the number of cases assigned to an attorney during the month. What needs to be reported in this situation?**

If the county's contract is with a **firm**, the name of the firm under contract or the name of the attorney from the firm who serves as counsel of record in the case should be reported as the appointee. If the county's contract is for services to be provided by a **specific attorney**, the name of the attorney should be reported. In both cases, since the fee is a set payment regardless of the number of cases, the fee paid per case does not need to be reported.

Attorneys Ad Litem and Guardians Ad Litem Under Contract for Set Fee

Contracts with law firms or specific individual to provide legal services for a **set monthly/annual fee regardless of the number of cases**

Report the Appointment

Law firm:

- ✓ Name of law firm as the Appointee or
- ✓ Name of specific attorney serving as counsel of record on case

Individual attorney:

Name of attorney

x Fees **do not** need to be reported



- C. Our county pays an attorney ad litem or guardian ad litem a set fee per case. If the fee exceeds \$1,000, does the number of hours billed and billed expenses need to be reported since the same fee gets paid regardless of the hours and expenses involved?**

No, hours and billed expenses would not need to be reported. However, if the appointee received a fee higher than the set rate, the additional information would need to be reported.

- D. What needs to be reported when the appointee is an attorney from the office of child or parent representation established in the county under Family Code Sec. 107.061?**

The office should be reported as the appointee. Since payment is not made to individual attorneys on a per case basis, the fee paid per case is not required to be reported.

Attorneys from Office of Child or Parent Representation

Established under Section 107.061, Family Code

Report the Appointment

List Appointee as:

- ✓ Office of Child or Parent Representation

(use whatever name it is called in your county)

x Fees **do not** need to be reported



E. What needs to be reported when the appointee is an attorney on the list maintained by a managed assigned counsel program serving in the county under Family Code Sec. 107.101?

The managed assigned counsel program should be reported as the appointee. If attorney’s fees are paid directly to the attorney, they should be reported. If fees are paid to the managed assigned counsel program on a per-case basis, they should be reported. If the fee arrangement with the entity operating the managed assigned counsel program is a set payment regardless of the number of cases, the fee paid per case does not need to be reported.

Attorneys on List Maintained by Managed Assigned Counsel Program

Established under 107.101, Family Code

Report the Appointment

List Appointee as:

- ✓ Managed Assigned Counsel Program
- (use whatever name it is called in your county)

Report the Fees if

- ✓ Paid to managed assigned counsel program on per-case basis
- ✓ Paid directly to attorney on per-case basis

Do Not Report Fees if

- x Fee is set payment (monthly/annual amount) regardless of number of cases

Where?

1. The clerk must post the report each month “at the courthouse” of the county in which the court is located. Where does the report need to be posted?

The report should be posted wherever all other court-related notices, dockets and documents are posted.

2. The clerk must post the report each month on “any Internet website of the court.” Where does the report need to be posted?

The county may determine where the best place to post the list may be. In most cases, this is likely to be the website of the district or county clerk since the clerk is responsible for maintaining the records of the courts and preparing and submitting the report.

3. Can we fulfill the requirement to post the appointments and fees reports on the county’s website by providing a link to OCA’s website?

OCA does not recommend this approach, particularly due to the fact that you would not be able to provide a link to the information for your county only. The interested party would need to sort through the information from all counties in the state. OCA recommends you contact your county attorney for their interpretation and counsel regarding this approach.

4. Where will I submit my report to OCA?

Through the same system that you submit your monthly court activity reports and appointments and fees reports: <http://card.txcourts.gov/>, using the same login ID and password.

How?

1. **The county only has information on compensation paid by the county. How do we determine what fees are paid when they are coming from another source (“private pay”)?**

It is recommended that the appointment order require that fee information be reported to the court so that the court clerk can comply with the reporting requirements.

2. **How will the information required by Chapter 36 be reported to OCA?**

The existing Appointments and Fees database has been modified to meet the requirements of Chapter 36. District and county clerks will notice little difference from how they are currently reporting. Fields have been added to capture Number of Hours Billed and Total Billed Expenses for cases in which the fee is more than \$1,000. A field has also been added to indicate whether a report is for appointments or fees.

Consult the materials posted on the Appointments and Fees webpage (<http://www.txcourts.gov/reporting-to-oca/appointments-and-fees/district-county/>) for further information.

3. **How can I upload my reports rather than having to manually enter them?**

Your case management system vendor or local IT staff will need to create the capability for you to generate an XML file from your case management system. This XML file contains the information necessary to upload the report.

XML instructions and other information are posted at <http://www.txcourts.gov/reporting-to-oca/appointments-and-fees/appts-fees-xml/>. This webpage is not visible from the main Appointments and Fees webpage; you must click on the link in this document, or enter the web address in your browser.

4. **How will I be able to submit outstanding older reports (for months prior to September 2016)?**

If you are entering the reports manually on October 1, 2016 or later, you will first select **Fees** for Type of Activity then continue to enter the information from the older report format.

The screenshot shows a form titled "Reportable Activity" with four fields: "Type of Activity", "No Activity", "Court Type", and "County". Each field has a dropdown arrow. The "Type of Activity" dropdown is open, showing options: "Select One", "Appointment", "Fees" (highlighted in blue), and "Select".

If you wish to upload reports on October 1, 2016 or later, the XML file must be in the new format.

In both cases, reports for **Appointments** do not need to be submitted.