

Responsibilities of the Probate Clerk

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Table of Contents

I.	Introduction	1
II.	Resources	1
III.	Clerk and Court	2
IV.	Filing Issues	2
	A. <i>Initial Filings – Civil Case Information Sheet</i>	2
	B. <i>Initial Filings – Docket Numbers</i>	2
	C. <i>Initial Filings – Addresses of Parties</i>	3
	D. <i>Initial Filings – Social Security & Driver’s License Numbers on Pleadings in Courts Other Than Statutory Probate Courts</i>	3
	E. <i>New Filings – Guardianship Cases Transferred into County</i>	3
	F. <i>Initial Filings – Miscellaneous Considerations</i>	3
	G. <i>Parental Notification for Abortions Involving Minors</i>	4
	H. <i>Fees</i>	4
	I. <i>Fees in Guardianship Cases</i>	5
	J. <i>Fees – First Responders</i>	5
	K. <i>Fees – Armed Forces</i>	5
	L. <i>No More References to the Court’s “Minutes”</i>	6
	M. <i>Affidavit in Lieu of Inventory</i>	6
	N. <i>Management Trusts</i>	6
	O. <i>Confidential Records in Guardianship Proceedings</i>	6
V.	The Clerk’s Seal & Signature	6
VI.	Recording, Indexing, and Imaging	7
VII.	Issuance of Letters	7
	A. <i>What’s necessary <u>before</u> letters can be issued?</i>	7
	B. <i>What do letters include?</i>	8
	C. <i>Letters or certificate for <u>temporary</u> administrators or guardians</i>	8
	D. <i>Renewing letters of guardianship</i>	8
	E. <i>Miscellaneous notes about letters</i>	9
VIII.	Reporting Requirements for Probate, Guardianship, and Mental-Health Cases	9
	A. <i>All Probate, Guardianship, and Mental Health Cases: Office of Court Administration Monthly Reports</i>	9
	B. <i>Probate Cases</i>	9
	1. <i>Voter registration</i>	9
	2. <i>Court-appointee fees of \$500 or more</i>	9
	C. <i>Guardianship Cases</i>	10
	1. <i>Voter registration</i>	10
	2. <i>Court-appointee fees of \$500 or more</i>	10
	3. <i>Driver’s license</i>	10
	4. <i>Department of Public Safety monthly reports on incapacitated adults – federal firearm reporting</i>	10
	5. <i>Private professional guardians</i>	10
	6. <i>Public guardianship programs</i>	11
	D. <i>Mental Health Cases</i>	11
	1. <i>Driver’s license</i>	11
	2. <i>Department of Public Safety monthly reports on incapacitated adults – federal firearm reporting</i>	11

Clerk Responsibilities

E. *When a Physician is the Subject of a Guardianship or Mental Health Case* 11

F. *Funds in Registry Report* 11

IX. The Claims Docket 11

A. *Decedents’ estates – “claims” definition & “claims docket”* 11

B. *Guardianships – “claims” definition & “claims docket”* 12

C. *Notice procedures for guardianships and decedents’ estates* 12

 1. *When a claim is presented* 12

 2. *When a claim is allowed or rejected, in whole or in part* 12

X. Criminal History Records 12

XI. Electronic Filing 13

XII. Determining whether an ad Litem is Still Active on a Guardianship Case 13

XIII. Access to Mental-Health Files 13

XIV. Deposit of Will for Safekeeping during Testator’s Lifetime 14

XV. Duty and Liability of Custodian of Estate Papers after Testator’s Death 14

XVI. Jurisdiction 15

XVII. Transfer of Case for Want of Venue 15

A. *Decedent’s Estate* 15

B. *Guardianship* 15

XVIII. Vexatious Litigants 16

XIX. Funds in Registry of Court 16

A. *Transfer of funds to separate accounts* 16

B. *W-9s and Taxes* 16

C. *Required reports and audits* 16

D. *Withdrawal or disbursement of funds* 17

E. *Interest and fees* 17

F. *Funds for unknown or missing persons on final account* 17

G. *Unclaimed funds* 17

XX. Interlocutory Appeals in Statutory Probate Courts 17

XXI. Request to be Notified of all Pleadings in Guardianship Cases 17

Appendix A. *Texas Attorney General Opinion No. JC-0323 (2001)* 19

Appendix B. *Civil Case Information Sheets* 23

Appendix C. *Presiding Statutory Probate Judge Administrative Order on Ancillary Cases, with Attached Instructions* 26

Appendix D1. *TRCP Rule 21c. Privacy Protection for Filed Documents* 28

Appendix D2. *Texas Attorney General Opinion No. GA-0519 (2007)* 28

Appendix E. *Conditional Filing* 37

Appendix F. *Texas Attorney General Opinion No. JC-0292 (2000).* 38

Appendix G. *Travis County Clerk Civil, Probate, & Mental Health Fees, effective 1/1/2014* 41

Appendix H. *Unsworn Declaration* 48

Appendix I. Letters or Certificate for Temporary Administrators or Guardians 49

Appendix J. Miscellaneous required reports 51

Appendix K. Form Clerk files with Guardianship Certification Board/Program regarding
Private Professional Guardians 55

Appendix L. Form the Guardianship Programs Should have Filed with the Clerk in January 56

Appendix M. Court’s Request for Criminal History Report from Guardianship Certification
Board/Program 58

Appendix N. Texas Electronic-Filing 59

Appendix O. Office of Court Administration Official Monthly Reports and Other Materials 62

I. Introduction

It is not possible to apply a one-size-fits-all approach to probate procedures in the courts of Texas's 254 counties. Many of our courts have Local Rules, but others do not. Some counties use imaging while others use Volume and Page, and there are myriad variations in between. Although each county is different, the same basic rules apply no matter the county.

Whether the court with probate jurisdiction in your county is a constitutional county court, a county-court-at-law, or a statutory probate court, one thing remains constant: the probate clerk is not allowed to give legal advice to its customers. However, you can solve much frustration by simply pointing a customer to the appropriate section in the Texas Estates Code ("EC"), whether the customer is a member of the public or an attorney. One last time, we've given dual citations in this paper, beginning with the EC cite, followed by the Probate Code cite in parentheses ("PC").

In this paper, we have tried to provide you with a general description of what is required by law. Each county will have its own method of handling the details, and one method is not necessarily better than another method.

II. Resources

There will always be new questions to answer, and the following resources may point you in the right direction of solving even the most obscure problem – updates of some of these are in process, so check for more-recent versions.

- A. *Texas Estates Code*. Multiple editions are available. The following two editions include helpful commentary in addition to the code itself and case annotations:
 - *Johanson's Texas Estates Code Annotated*, West Publishing.
 - *O'Connor's Estates Code Plus*, Jones McClure Publishing.
 Current editions include both the Estates Code and the Probate Code.
- B. *Texas Rules of Court*.
- C. Local rules for the court with probate jurisdiction in your county.
- D. *Texas Family Code*.
- E. *County Clerk Procedure Manual, December 2012 Edition*, published May 22, 2013, from the Texas Office of Court Administration, is current through the 2011 legislative session and is available at <http://www.courts.state.tx.us/pubs/Manuals/cclerk/2012ccm.pdf>.

- F. District Clerk Civil Filing Fees & District Court Civil Suits, effective January 1, 2014. <http://www.courts.state.tx.us/pubs/fees-info.asp>. (OCA has no current online list of court costs and fees for county clerks, except for criminal cases.)
- G. *18th Edition of Texas Laws Relating to Mental Health*, available through the DSHS website at http://www.dshs.state.tx.us/mhrules/Texas_Laws.shtm. Updated through **2011** legislative session.
- H. For Texas laws relating to intellectual disabilities (formerly mental retardation), see relevant sections of the *4th Edition of Texas Laws Relating to DADS* (Department of Aging and Disability Services), available at http://www.dads.state.tx.us/rules/texas_laws.html on the DADS website. Updated through the **2011** legislative session. See the Probate Code section at the same link for laws relating to guardianships. The link also includes laws on these subjects in the Criminal Code, Family Code, Government Code, and Human Resources Code.
- I. *An Analysis of the Texas Mental Health Code*, Hogg Foundation for Mental Health. (512) 471-5041 or toll free (888) 404-4336. P.O. Box 7998, Austin, Texas 78713-7998.
- J. Helpful Internet websites:
 1. Texas Government: <http://www.texasonline.com/portal/tol>.
 2. Texas Courts Online: <http://www.courts.state.tx.us>.
 3. Texas Constitution and Statutes: <http://www.statutes.legis.state.tx.us/>.
 4. Texas Legislature Online (links to proposed and enacted legislation). <http://www.capitol.state.tx.us>.
 5. Attorney General Opinions: <http://www.oag.state.tx.us/opin/>.
 6. Texas Office of Court Administration: <http://www.courts.state.tx.us/oca/>.
 7. Texas Association of Counties: <http://www.county.org>.
 8. Most of the statutory probate courts have websites with links to local rules, fees, and other basic information that may be helpful. See, for example, the websites for the Travis County Probate Court set out below **or, more easily, Google the name of the statutory probate court.** <http://www.co.travis.tx.us/probate/default.asp>

Clerk Responsibilities

III. Clerk and Court

Although the County Clerk has the authority to administer the clerk's office as the clerk believes appropriate, the clerk may not exercise the authority unilaterally, especially in matters affecting the administration of justice in the courts the clerk serves. When the clerk exercises ministerial duties that affect the administration of justice in the courts the clerk serves, the clerk is subject to the authority of the judiciary.

Thus, for example, the clerk can't change the hours the clerk's office is open to the public without the permission of the courts the clerk serves. *Op. Tex. Att'y Gen. No. JC-0323 (2001)* (see Appendix A). As noted in that Attorney General Opinion, a county clerk is "subject to the authority of the judiciary" and "receives documents for filing on behalf of" a court. The Attorney General relied on the Texas Supreme Court's statement that "[t]he clerk is an officer of the court subject to the court's direction and control in exercising ministerial duties . . ." *Stokes v. Aberdeen Ins. Co.*, 917 S.W.2d 267, 268 (Tex. 1996) (per curiam).

Also see the Texas Supreme Court's 1988 decision upholding an order in which a district judge held a district clerk in contempt for failure to mail copies of the trial docket to attorneys of record in cases in that court. *Ex Parte Thomas P. Hughes, District Clerk of Tarrant County*, 759 S.W.2d 118 (Tex. 1988). The Supreme Court said that "[i]t is important that the trial court be vested with such powers as may be reasonably required to perform its judicial functions, protect its dignity and integrity, and make its lawful actions effective." *Id.* at 120.

IV. Filing Issues

Generally speaking, if presented with the correct filing fee, the clerk must file an instrument. A defect in pleadings, no matter how glaring, is not sufficient to turn away someone from filing.

A. Initial Filings – Civil Case Information Sheet

In February 2013, the Texas Judicial Council updated the standard state-wide civil case information sheet that must be completed and submitted with every new civil, family law, probate, or mental health case. See Appendix B for the updated form and instructions, which are also posted on the OCA website, www.courts.state.tx.us/oca/required.asp, in both Word and PDF format. Courts can add additional information but cannot subtract anything from the form. See Rule 78A of Rules of Court or Rule 78A of Texas Rules of Civil Procedure. For example, the Travis County Probate Court requires a supplementary information sheet that includes all codes the clerk

needs to accurately classify new cases for the county's database system. See Appendix B.

Clerks can use the information on this form to complete the *pro se* block on the OCA reporting form.

B. Initial Filings – Docket Numbers

When an application for probate of a will, administration, guardianship, or any other opening instrument is filed, the first step is to assign the next consecutive file or docket number. *Tex. R. Civ. P. 23*. Many counties use a different sequence of filing numbers for cases on the mental-health docket because of confidentiality considerations required by Health and Safety Code §571.013.

An individual may have two probate cause numbers filed in association with his or her name, one in a guardianship and the other when the person's estate is brought into probate.

The method of court assignment is decided on a county-by-county basis. Most counties with more than one court hearing probate matters will handle assignments by rotating the courts in some manner.

Subsequent pleadings or documents associated with an estate or guardianship are filed within the original docket number. Any **competing applications** should be consolidated into the application that was filed first.

Counties differ in how they assign docket numbers to **actions that are related to an already-filed cause of action, but are not part of that action**. Some counties give such an action a completely different number. Other counties give the new action a docket number that's related to the original docket number, but differentiated in some way to denote a different cause of action (for example, with a sub-number). All pleadings associated with a particular cause of action must be filed within the docket number assigned to that particular cause of action – whether the cause of action of the original petition, of a cross-complaint, or of an ancillary action.

The following is an example of multiple, related causes of action:

- John Doe dies, and his will is probated. The cause number for the probate of his will is 12,345.
- His executors sue the doctor, hospital, and laboratories for wrongful death. The docket number for the lawsuit would be something other than 12,345: for example, 12,346 or 12,345-A or whatever system the county is using.
- If Jane Smith then sues the estate of John Doe for monies owed to her, the docket number for her suit would be 12,347 or 12,345-B. If the estate counterclaims that Jane Smith owes the estate money, the counterclaim would be filed

under the number or sub-number for the Smith v. Doe cause of action: 12,347 or 12,345-B.

- If someone contests the probating of the will, the contest would be filed in the original 12,345 docket number because the contest would be part of the already-filed cause of action to probate the will.

To get the complete picture in a case, the judge may find it necessary to review all related cases. Sub-dockets allow easier access to the entire probate proceedings of an individual by making it easier to find a complete history of all related causes of action. Consider the alternative: If each adverse action received a completely new number, each action would have to be found, accessed, and melded into a report.

But there is a potential drawback when sub-dockets are used: some lawyers may be less careful about using the precise sub-docket-number for subsequent pleadings. Files may become intermingled unless the clerk carefully checks to see that the case name on each pleading filed matches precisely the case name assigned to that docket number. This drawback can be minimized by the clerk's careful attention.

For those counties that have statutory probate courts, Judge Guy Herman, Presiding Judge of the Statutory Probate Courts of Texas, issued Administrative Order Number 2006-14 directing certain aspects of how the clerk of the court should file pleadings in the core case and in ancillary cases. See Appendix C.

C. Initial Filings – Addresses of Parties

Section 30.015 of the Texas Civil Practice & Remedies Code requires that the clerk receive written notice of the name and current residence or business address of each party who has appeared or answered in a civil action. Tex. Civ. Prac. & Rem. Code §30.015. The party or the party's attorney must provide the information at the time the party files its initial pleading or not later than the seventh day after the date the clerk of the court requests the information. If the address changes, the party or party's attorney must provide the clerk with written notice of the party's new address. The court may fine a party that fails to provide the required information. Tex. Civ. Prac. & Rem. Code §30.015(e).

D. Initial Filings – Social Security & Driver's License Numbers on Pleadings in Courts Other Than Statutory Probate Courts

Civil Practice and Remedies Code §30.014 requires that in a civil action filed in a district court, county court, or statutory county court, each party or the party's attorney shall include in its initial pleading the last three numbers of the party's driver's license number and the last three numbers of the party's social security number if the party has been issued those

numbers. The court can find a party in contempt if the party does not amend the pleading if ordered to do so by the court.

Important note regarding redaction of sensitive data, including SSNs:

All clerks – including clerks for statutory probate courts – should be familiar with new Rule 21c of the Texas Rules of Civil Procedure as well as Texas Attorney General Opinion No. GA-0519 (2007). See Appendix D.

E. New Filings – Guardianship Cases Transferred into County

The 2011 special session changed requirements regarding transfers of guardianship cases, including transfers from another state as well as transfers from one county to another.

The judge who signs the transfer order shall order the guardian to file a new bond or a rider to the present bond within 20 days of the date of the order, making the bond payable to the Judge of the court to which the guardianship is transferred. EC §1023.005(b) (PC §614).

The clerk of the “old” court needs to act quickly to transfer to the new county the original case file and a certified copy of the index of the guardianship records. EC §1023.006 (PC §615).

The clerk of the “new” court needs to immediately:

(1) read the transfer order to determine when the bond or rider is due, and enter the due date in the court management system if the clerk is the one that handles that task,

(2) forward the file to the court for its review, and

(3) send the required certificate to the “old” county – a necessary step to make the transfer effective. EC §1023.007 (PC §616).

The “new” court needs to:

(1) enter the bond or rider due date in the court management system if the court is the one that handles that task, and

(2) set the required review hearing no later than the 90th day the transfer takes effect. EC §1023.010 (PC §619).

F. Initial Filings – Miscellaneous Considerations

In general, the clerk shall not refuse to accept a document for filing. Although the filing of a document is not completed until required filing fees are tendered, the document is *conditionally filed* on the date the document is initially tendered to the clerk. *Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1994) (emphasis

Clerk Responsibilities

in original). Except in an emergency or other unusual circumstances, the court should not consider a pleading until the fee is paid, but the conditional-filing date controls for appellate purposes. *Id.* The conditional-filing date also controls for transfer purposes – although the appellate court again emphasized that, as a general rule, the court should not consider the pleading until the fee is paid. *In re Lewis*, 185 S.W.3d 615, 617-618 (Tex. App. – Waco 2006, no pet.).

The Galveston County Clerk has created a form to use when there is a conditional filing – printed on bright paper and attached to the front of the pleading, telling the Judge that the filing is conditional and how much is owed. This form really helps the Judge by making it very clear that the court cannot act on that pleading. See Appendix E.

Texas Attorney General Opinion JC-0323 (2001, reproduced in Appendix A) clarifies two other important requirements related to filing:

- Immediately upon receiving an instrument for filing, the clerk must endorse on the instrument the date and time it was received. Op. Tex. Att’y Gen. No. JC-0323 (2001).
- For purposes of filing, a mailed document is given the same priority as a hand-delivered document. Op. Tex. Att’y Gen. No. JC-0323 (2001).

G. Parental Notification for Abortions Involving Minors

Family Code §§33.001-.011, relating to parental notification for abortions involving minors, also applies to court-appointed guardians of the person of a minor. Under the law, a minor may obtain a judicial bypass from the requirements of parental (or guardian) notification. The clerk is **not** to record the case. All filings are styled **Jane Doe**. The clerk does not collect fees. Clerks also need to be familiar with the local rules of the courts with which they work because the local rules of district and county courts may affect which courts hear these cases.

H. Fees

The fees a clerk may or must charge are set by statute. In addition to fees for probate cases, the clerk shall collect the fees authorized for civil cases unless the Estates Code directs otherwise. EC §53.051 (PC §12(a)).

Most fees collected by county clerks are set out in §118.052 of the Local Government Code (LGC). Other codes and other sections of the LGC also establish fees to be collected by the clerk’s office. For example, the court reporter fee is found in Government Code §51.601; the judge’s training fee is found in LGC §118.064; the alternative dispute resolution fee is found in §152.004 of the Civil Practice and Remedies Code. Some fees are set by the commissioners court

for each county, as authorized by statute. For example, pursuant to LGC §118.131, the commissioners court for each county will set the fee for a posted notice required by EC §51.053 (PC §33(f)(2)). Some fees may be collected only if certain conditions are met. For example, the court reporter fee may be collected only if the court has an *official* court reporter. See Op. Tex. Att’y Gen. No. GA-0372 (2005).

Some fees are prohibited by law. For example, a clerk may not charge a reasonable fee for labor costs associated with fulfilling a request for noncertified copies of fifty or fewer pages of public information that is located in one building and that is not located in a remote storage facility. Op. Tex. Att’y Gen. No. JC-0292 (2000). The Attorney General came to this conclusion even though §118.011(c) of the Local Government Code requires a clerk to “charge reasonable fees for performing other duties prescribed or authorized by statute for which a fee is not prescribed by this subchapter.” The labor costs of fulfilling the request are included in \$1 charge per page or part of a page mandated by §118.011(a)(4) of the Local Government Code. Op. Tex. Att’y Gen. No. JC-0292 (2000). See Appendix F.

See Appendix G for a copy of the Travis County Clerk’s fee schedule, including statutory references and a breakdown of composite fees.

Several new fees were added by the 2013 Legislature:

1. **Required electronic filing fee.** Effective September 1, 2013, Government Code §51.851 established an electronic filing fee of \$20 that shall be collected on the filing of any civil action or proceeding, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action that requires a filing fee. *These fees are to be deposited in the local treasury and then remitted to the comptroller for the credit of a new statewide electronic filing system fund.* See Gov’t Code §§51.851(g)-(k), 51.852, 101.08117, 101.10116, & 101.12126.

2. **Optional electronic filing transaction fee.** Also effective September 1, 2013, new Government Code §72.031(c) allows a local government that uses the electronic filing system to charge a fee of \$2 for each electronic filing transaction – *but only if the fee is necessary to recover the actual system operating costs reasonably incurred by the local government.* The costs can’t include employee costs, other than costs for directly maintaining the system. The governing body of the local government must approve the fee and must *annually* certify to the Office of Court Administration that the amount of the fee is necessary to recover the actual system operating costs incurred by the local government. The authority to collect this fee expires September 1, 2019.

3. **Supplemental Public Probate Administrator Fee** may be collected *in a statutory probate court county that has appointed a public probate administrator*. LGC §§118.052(2)(F) & 118.068; Gov't Code §101.103. This \$10 fee is for the support of the office of public probate court administrator under EC §455. (Government Code §101.08145 and §101.12145 suggest that statutory county courts and county courts could collect this fee, but both sections refer to LGC §118.052(2)(F), which specifies that this is a fee “for counties that have appointed a public probate administrator” – and only statutory probate counties may appoint one.)

I. Fees in Guardianship Cases

The 2013 Legislature added EC §1052.051 (d), (e), & (f) regarding filing fees in guardianship cases, making significant changes in who pays fees as of January 1, 2014. Some changes were intended, but other provisions were inadvertently added during the legislative process. Work is already underway to undo the inadvertent changes during in 2015.

The new law relating to fees:

(a) An application for a guardianship proceeding or a complaint, petition, or other paper permitted or required by law to be filed with a court in a guardianship proceeding must be filed with the county clerk of the appropriate county.

....

(d) Except as provided by Subsection (e), the court clerk shall collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document.

(e) Notwithstanding any other law requiring the payment of a filing fee for the document, the following are not required to pay a fee on the filing of a document described by Subsection (a):

- (1) a guardian;
- (2) an attorney ad litem;
- (3) a guardian ad litem;
- (4) a person or entity who files an affidavit of inability to pay under *Rule 145, Texas Rules of Civil Procedure*;
- (5) a guardianship program;
- (6) a governmental entity; and
- (7) a government agency or nonprofit agency providing guardianship services.

(f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:

- (1) the guardianship estate; or
- (2) the county treasury, if the guardianship estate is insufficient to pay the amount of the filing fee.

Four main changes were intended:

- Filing fees – including any deposit for an attorney ad litem – are now paid by guardianship applicants who have the ability to pay those fees. Non-indigent applicants can no longer avoid paying fees because the potential *ward* does not have the ability to pay.
- Following creation of a guardianship, the guardianship applicant can have filing fees reimbursed by a guardianship estate, except for any ad litem deposit.
- Attorneys ad litem, guardians ad litem, governmental entities, and governmental or nonprofit agencies providing guardianship services are not required to pay filing fees in guardianship proceedings.
- Guardianship programs are not required to pay filing fees in guardianship proceedings unless there is a guardianship estate.

The following changes were not intended:

- It was not intended that a guardianship applicant could have filing fees reimbursed by the county following creation of a guardianship if there is no guardianship estate.
- It was not intended that a guardian would be exempt from filing fees.
- It was not intended that a guardianship program would be exempt from filing fees when there is a guardianship estate.

J. Fees – First Responders

EC §53.054 (PC §11B) exempts from probate filing fees estates of certain law enforcement officers, fire fighters, EMS personnel and other eligible decedents killed in the line of duty. “Eligible decedents” are those individuals identified in Government Code Section 615.003. This statute applies only to the estates of a decedent who dies on or after the September 1, 2011 effective date.

K. Fees – Armed Forces

Estates Code §53.053 (PC §11A) prohibits the clerk from charging a fee for the estate of a decedent that died in a combat zone while on active duty.

Government Code §431.039 provides that either a member of the National Guard on federal active duty or a member of the armed forces on active duty is exempt from paying certain fees if the member incurs the fees while arranging his or her personal affairs while preparing to be deployed to serve in a “hostile fire zone” as designated by the United States Secretary of Defense. In these circumstances, fees cannot be charged for obtaining copies of a birth certificate, a recorded marriage license, a divorce decree, a child

Clerk Responsibilities

support order, guardianship documents, and property tax records.

Fees also cannot be charged for issuing a marriage license or a duplicate marriage license for transferring title to real or personal property

L. No More References to the Court's "Minutes"

Remember that the 2009 Legislature changed all references to "minutes" or "court's minutes" to either the "judge's probate docket" or the "judge's guardianship docket" as applicable – and these changes carry forward to the Estates Code.

M. Affidavit in Lieu of Inventory

Since 2011, an Independent Executor has an alternative to filing an inventory when there are no unpaid debts, except for secured debts, taxes, and administration expenses. EC §309.056 (PC §250). The Independent Executor, at the time the inventory is due including any extensions, can file an affidavit stating that all debts as outlined above are paid and that all beneficiaries have received a verified, full, and detailed inventory. The affidavit **MUST** be filed within the prescribed due date of the inventory. A person interested in the estate may apply to the court for an order compelling the providing of an inventory to the interested person. The court can enter an order either granting or denying the request.

The clerk will need to determine from the judge of the court whether the judge wants the affidavits sent to the court or whether the judge simply wants the clerk to file them in the case file. If the clerk is the person entering compliance in the court management system, the clerk will need to show that the need for the inventory to be filed has been satisfied when the affidavit is filed.

N. Management Trusts

If the clerk enters data in the court management system, the clerk needs to be aware of two provisions related to Chapter 1301 trusts (PC §867 trusts).

One provision is that, not later than the 30th day after the date a trust receives property into the trust, the trustee of a Chapter 1301 (PC §867) trust is required to file a report describing all property held in the trust on the date of the report and specifying the value of the property on that date. EC §1301.1535 (PC §870A).

The other provision is that the court may **NOT** require a trustee of a trust created for a person who has only a *physical* disability to prepare and file either an annual account or a final account with the court. So – if the clerk is the person who enters data in the court management system – the clerk needs to be aware of the nature of the beneficiary's disability that created the need for the trust. EC §§1301.154 & 1301.204 (PC §§871 & 873).

O. Confidential Records in Guardianship Proceedings

When a person is protected by a protective order issued under Chapter 85 of the Texas Family Code, that person or someone representing that person (guardian, attorney ad litem, member of family or household) may ask the court to exclude certain personal information from any document filed in a guardianship proceeding. EC §1053.104 (effective January 1, 2014). When the court grants a request for confidentiality under this section, the clerk must strike the following information about the protected person from the public records and maintain a confidential record of the information for use only by the court:

- address and phone number;
- place of employment or business;
- school, day-care, or other child-care facility; and
- place at which service of process was effectuated.

The clerk should be very careful to make sure that this information is also deleted from the electronic record of the guardianship in the clerk's court management system.

V. The Clerk's Seal & Signature

The 2013 Legislature changed the law effective immediately to allow a court's seal to be created using electronic means and to allow a county clerk's signature to be affixed on an original document using electronic means. Gov't Code §26.005. The seal or signature must be created in a manner that "does not allow for changes, additions, or deletions to be made to the document." In addition, a "seal impressed or a signature affixed by electronic means may be delivered or transmitted electronically." Although this change is made in the section of the Government Code that applies to Constitutional County Courts, the change also applies to statutory county courts. (Government Code §25.0011 provides that the "seal of each statutory county court is the same as that provided by law for a county court except that the seal must contain the name of the statutory county court as it appears" in chapter 25 of the Government Code.)

As the Government Code notes, the "seal shall be impressed on all process other than subpoenas issued out of the court and shall be used to authenticate the official acts of the county clerk and county judge." Gov't Code §26.005. The Estates Code also indicates specific instances when a seal needs to be used to authenticate these official acts – for example the requirement that letters testamentary or of administration be "attested by the court's seal." EC §306.005 (PC §183).

The Local Government Code was also changed to update how seals may be used to authenticate the

clerk's official acts as county recorder. Now the "clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction." Local Gov't Code §191.001(b).

VI. Recording, Indexing, and Imaging

Methods of recording, indexing, and imaging vary throughout the State, depending on the number of applications received and the personnel resources and technology available to the county. The return time from recording will vary based on the proximity and speed of the machinery used. Obviously these variations will diminish as more counties are covered by mandatory e-filing.

Even before mandatory e-filing, many larger counties have been using imaging as a way to both preserve documents and speed up customer and court access. Each filed document is scanned and saved as a picture in the county's database. That database is then available to the clerk and the court, providing easy access to all filed documents. If a copy is needed, it can be printed directly from the computer. However, original records are still available and used by the courts. The main benefit is to customers and deputies.

Proponents of imaging tout it as a way to protect original wills from ever being lost. However, there are some concerns about the practical effects of imaging. It is important that in those counties where the imaged documents are online, the court and the clerk work together to make sure that sensitive data such as medical information in guardianship files is protected. It is also important that the clerk make sure that the file is not online during a trial if it is a contested case that is being tried to a jury.

VII. Issuance of Letters

After an administration or guardianship is created, the clerk will be called on to issue "letters,"¹ which serve as a personal representative's certificate of appointment. See EC §306.005 (PC §183) & EC §1106.001 (PC §659). The personal representative uses the letters as evidence of his or her appointment.

¹ Letters Testamentary are issued to a personal representative of a decedent's estate who is serving under provisions of the decedent's will (an executor). Letters of Administration are issued to any *other* type of personal representative of a decedent's estate (an administrator). The type of administration and the type of administrator depend on the situation. Letters of Guardianship are issued to a personal representative of a ward's person or estate or both (a guardian).

A. ***What's necessary before letters can be issued?***

1. **A valid oath** must be filed before letters can be issued. The Estates Code sets out the statutory language that should be substantially present in the oath: EC §305.051 for an executor or administrator with will annexed, §305.052 for an administrator, §305.053 for a temporary administrator, and §1105.051 for a guardian (formerly PC §§190 & 700). An oath cannot be taken before the judge signs the order appointing the personal representative. Attorneys may show up at a hearing with their client's oath already signed before a notary public. But before the order is signed, there is no "oath" to take because no duties have been created. Thus, the attorney will have to have his clients re-sign their oaths before the clerk can issue letters.

2. **What about unsworn declarations?** The 2011 Legislature amended Civil Practice and Remedies Code Section 132.001 to allow an unsworn declaration under penalties of perjury to be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute, by a rule, order or requirement adopted as provided by law. An unsworn declaration is not allowed for an oath of office or an oath to be taken before a specified official other than a notary public. Nor is an unsworn declaration allowed for the self-proving affidavit of a will or codicil. EC §21.005.

An unsworn declaration must include a jurat in substantially the form in Appendix H.

The Estates Code specifies that an oath in an administration may be taken before an officer authorized to administer oaths and does not preclude taking the oath before a notary public. EC §305.054 (PC §90(d)). The Code is silent on who administers a guardian's oath. EC §1105.051 (PC §700).

QUESTION – Can judges issue administrative orders requiring a sworn jurat on an oath of a personal representative?? What about waivers of citations and consents to independent administration??

3. **If a bond is required**, the bond also must be approved and filed before letters can be issued. EC §305.004.

4. **If the personal representative is not a resident of Texas, a Resident Agent must be named** before letters can be issued (and should be named before an appointment order is signed). If the Resident Agent has resigned or been terminated,

Clerk Responsibilities

the deputy must make sure that a new one has been appointed.

B. What do letters include?

1. **Letters are certificates of appointment naming the personal representative** and providing other information required by statute (see below). Each certificate shall be an original, with the clerk's or deputy clerk's signature and the court seal.
 - a. **Letters Testamentary, Letters of Independent Administration, Letters of Administration, and Letters of Administration with Will Annexed** state that the executor or administrator has qualified as required by law and also indicate the qualification date and the decedent's name. EC §306.005 (PC §183).
 - b. **Letters of Guardianship** state the fact of the appointment and of the qualification, the date of the appointment and of the qualification, and the date the letters of guardianship expire. EC §1106.001 (PC §659(a)).
2. For temporary administrations or temporary guardianships, the **order** limits the power a personal representative has, and the letters or certificate (see below) must indicate those limited powers. For temporary administrations, see EC §§452.003 & 452.005 (PC §131A (c) & (e)); for temporary guardianships, see EC §§1251.010 & 1251.101 (PC §§875(g) & 876).

C. Letters or certificate for temporary administrators or guardians

1. **Letters of Temporary Administration** must always include the powers of the personal representative and are usually valid for no more than 180 days. Both of these facts should be incorporated into the letters. Some counties will list the limiting powers on each letter of temporary administration produced, as the statute specifies. If this is not possible in your county, a certified copy of the order may be attached to the letters instead, as long as the letters refer to the attached order. See Appendix I, page 48. Note that Letters of Temporary Administration granted to a Temporary Administrator in a will contest are **not** subject to the 180-day restriction. This fact should be stated in the letters.
2. **Letters of Temporary Guardianship are no longer issued.** Once an order appointing a temporary guardian has been filed and the guardian qualifies, a certificate noting the same is attached to the order, and the certificate along with a certified copy of the completed order is issued to the customer. See EC §1251.101 (PC §876):

- “(a) When the temporary guardian files the oath and bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.
- “(b) The clerk shall note compliance with the oath and bond requirements by the appointed temporary guardian on a certificate attached to the order.
- “(c) The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order.
- “(d) The clerk may not issue certified copies of the order until the oath and bond requirements are satisfied.”

A sample of the certificate used in Travis County is shown in Appendix I, page 49.

D. Renewing letters of guardianship

1. All letters of guardianship expire one year and four months after the date of issuance unless renewed. EC §1106.002 (PC §659(b)). The clerk may not renew letters of guardianship until certain things are done:
 - a. **For guardianships of the estate**, the clerk may not renew letters of guardianship until the court receives *and approves* the guardian's annual accounting. EC §1106.003(a) (PC §659(c)).
 - b. **For guardianships of the person**, the clerk may not renew letters of guardianship until the court receives *and approves* the guardian's annual report. EC §1106.003(b) (PC §659(c)).
 - c. **For all guardianships with a non-resident guardian**, the clerk must verify that there is still a valid Resident Agent. If a Resident Agent resigns or is terminated, the clerk must verify a successor **before** issuing letters.
2. The dates that the letters are valid shall be part of the letters. Regardless of the date the court approves an annual accounting or annual report, the renewal date relates back to the date the original letters of guardianship are issued, with one exception. The exception applies when the accounting period has been changed as provided by the Texas Probate/Estates Code. If the accounting period has been changed, the date of the renewal relates back to the first day of the new accounting period. EC §1106.003(d) (PC §659(d)).

- Before renewing letters, be sure the information in the new letters is precise. For example, be sure the dates are accurate. Also be sure that the letters as prepared conform to the current status of the case; for example, a limited guardianship could become a full guardianship or vice versa, and the letters would need to be altered accordingly.

E. Miscellaneous notes about letters

- Although there is no statutory expiration date for Letters Testamentary or Letters of Administration, most financial institutions require they be no older than 60 days.
- Estates Code §405.003 (PC §149E) pertains to judicial discharge of an independent executor. An independent executor may file an action for declaratory judgment seeking to discharge the independent executor and release him from liability after the estate has been administered.
- Estates Code §§405.004-.007 (PC §151) set out the procedures and the effect of closing an independent administration by a “closing report” or by “notice of closing estate.” With either of these procedures, the independent administration is considered closed **30 days after the date of the filing** of the closing report or the notice of closing estate **unless an interested person files an objection within that 30-day period**. If an objection is filed, the administration is closed when the objection has been disposed of or when the court signs an order closing the estate.

The clerk must make sure to monitor the file for thirty days when a closing report or notice of closing estate has been filed and **may NOT** issue any letters after that 30-day period or after the court signs an order closing the estate. EC §405.007.

VIII. Reporting Requirements for Probate, Guardianship, and Mental-Health Cases

The following is non-exhaustive list of some of the required reports that county clerks must make related to probate, guardianship, and mental-health cases.

A. All Probate, Guardianship, and Mental Health Cases: Office of Court Administration Monthly Reports

Government Code §71.035 requires the clerk to submit an Official Monthly Report on Court Activity to the Texas Judicial Council, due by the 20th day of the following month. These reports indicate, by type, the number of cases filed, disposed of, and still pending in the current month. The Council provides forms and instructions through the Office of Court Administration (OCA). See:

<http://www.courts.state.tx.us/oca/required.asp>.

The report may also be filed online. See: <http://card.txcourts.gov/Secure/login.aspx?ReturnURL=default.aspx>.

The reports must be made available to the public for inspection and copying. The clerk must keep copies of these reports for at least two years. See Appendix O.

Mental Health cases. Although a mental health proceeding is now considered a guardianship proceeding under EC §1002.015(3) (PC §601(25)), **mental health proceedings are to be reported on the mental health portion of the monthly OCA report and not under guardianship proceedings.** In the report, clerks provide information on the number of applications for commitment orders for involuntary mental health services and the disposition of those cases, including a breakdown of inpatient and outpatient services. The report gives only numbers, not information about specific cases.

B. Probate Cases

1. Voter registration.

Election Code §16.001(b) requires the clerk to prepare an abstract of each application for probate of a will or administration of a decedent’s estate that was filed with a court served by the clerk – which includes muniments of title, determinations of heirship, and small estate affidavits. The abstracts must be filed every month with **the voter registrar and the secretary of state** not later than the 10th day of the following month. Some counties submit the abstract to the voter registrar as each order is signed. See Appendix J, miscellaneous required reports, page 50.

If the clerk is the registrar of deaths, Election Code §16.001(a) requires that the clerk prepare an abstract monthly of each death certificate issued in the month for a decedent 18 years of age or older who was a resident of the state at the time of death. These abstracts, too, are filed with the voter registrar and the secretary of state not later than the 10th day of the following month. QUESTION: If death certificates are officially filed in the County Clerk’s office and the clerk notifies the Secretary of State when the death certificate is filed, does the clerk have to notify the Secretary of State again at a later date when an application to probate the decedent’s estate is filed? The statute would seem to say YES.

2. Court-appointed fees of \$500 or more.

Texas Supreme Court Order 07-9188 – *Second Amended Order Regarding Mandatory Reports of Judicial Appointments and Fees* – requires the clerk to prepare a monthly report that includes information about each court-approved fee of \$500 or more for a

Clerk Responsibilities

court appointee such as an attorney ad litem in an heirship case. (The Order can be found in *Texas Rules of Court*.) The Order does not apply where a party has the right to select the person appointed (as with independent executors) or where compensation is solely by government salary rather than fee.

The Order also requires that the Judge sign a memorandum order giving specific information when the Judge approves a fee of over \$500. A sample of the memorandum order used by Travis County is found in Appendix J, miscellaneous required reports, on page 51. The memorandum order will help the clerk prepare the report.

The clerk must transmit the monthly report to the Supreme Court through the Office of Court Administration before the 20th day of the following month. See Appendix O, pages 77-91. The clerk shall make the report available for public inspection in the clerk's office and shall retain each report for at least two years following the date it is made available for public inspection.

C. Guardianship Cases

1. Voter registration.

Texas Election Code §16.002(a) requires special findings by the court before the granting of a guardianship would eliminate the right to vote. **The clerk must prepare an abstract for the voter registrar only if the court's order finds the ward to be either "totally mentally incapacitated" or "partially mentally incapacitated without the right to vote."**

Section 16.002 also addresses **restoration** of capacity. Section 16.002(a) requires that the clerk prepare an abstract for the voter registrar when a final judgment adjudges the mental capacity of a Texas resident 18 years of age or older to be "completely restored" or modifies the guardianship of a person 18 years of age or older to include the right to vote. Texas Election Code §16.002(a).

It is important that the clerk read very carefully all orders appointing a guardian or modifying an existing guardianship in order to know when to send the notification to the voter registrar. The required abstract is due by the 10th day of the following month. Some counties, including Travis, submit the abstract to the voter registrar as each order is signed. See Appendix J, miscellaneous required reports, page 52.

2. Court-appointee fees of \$500 or more.

Texas Supreme Court Order 07-9188 applies to guardianship as well as probate cases. As described in VII.B.2 above, the clerk must prepare a monthly report that includes information about each court-approved fee of \$500 or more for a court appointee such as an

attorney ad litem or guardian ad litem in a guardianship case. For more details, see VIII.B.2.

3. Driver's license.

The court order establishing a guardianship must specifically state whether the person is incapacitated because of a mental condition and, if so, whether the ward maintains eligibility to hold or obtain a license to operate a motor vehicle. EC §§1101.151 & 1151.152 (PC §693). If the order takes away that right, then the clerk shall give notice to the Department of Public Safety of the entry of the order by completing DPS Form DIC-17 (03/08) and forwarding it to the Department of Public Safety in Austin within 10 days of the judgment. Tex. Transp. Code §521.319(d); see also Appendix J, miscellaneous required reports, page 53. **The clerk must look at the specific order to see if notice is required.**

Section 521.319(f) of the Transportation Code requires the clerk to notify DPS within 10 days after a person's capacity is restored by judicial decree.

4. Department of Public Safety monthly reports on incapacitated adults – federal firearm reporting.

Government Code §§411.052 and 411.0521 requires the clerk to file with the Department of Public Safety (DPS) a monthly report on incapacitated adults for whom a court has appointed a guardian of the individual under "Chapter XIII, Probate Code, based on the determination that the person lacks the mental capacity to manage the person's affairs." (This reference to the Probate Code will be changed during the next legislative session.)

The DPS has prepared a report that the clerk will use to forward the complete name, race, and sex of each person, the person's date of birth, and any identifying information such as social security number, drivers' license number, or state identification number, along with an electronic copy of the order appointing a guardian. This report is due by the 30th day after the end of the previous month.

The Criminal Justice Information System (CJIS) site on the DPS website was designed to assist counties in managing their Computerized Criminal History (CCH) information and their Federal Firearms Reporting transactions. See:

http://www.txdps.state.tx.us/administration/crime_records/pages/cjisSite.htm

There are provisions that would allow a ward to remove his or her information from the registry if a court order is issued that the person is no longer incapacitated.

5. Private professional guardians.

Private professional guardians must apply to the clerk annually for a "certificate of registration." EC

§1104.302 (PC §697). Applications must include the private professional guardian's certification number or provisional certification number issued by the Guardianship Certification Board (which will become the Guardianship Certification Program of the Judicial Branch Certification Commission September 1, 2014). Beginning January 1, 2014, there's a \$40 fee for filing the registration. EC §1104.003.

Initial applications may be made at any time, but all renewal applications must be completed in December. **The statute requires clerks to bring the information in the applications to the judge's attention for review.**

By **January 31** of each year, EC §1104.306 (PC §697(e)) requires the clerk to submit to the Guardianship Certification Board/Program the names and business addresses of all private professional guardians who, during the preceding year, have met the registration requirements of EC §1104.304 (PC §697). The form the clerk is required to file may be accessed at www.courts.state.tx.us/gcb/reporting.asp. See Appendix K. A new form will be posted in January of each year. Reports no longer need to be made to the Health and Human Services Commission.

6. Public guardianship programs.

By **January 31** of each year, each guardianship program operating in a county shall submit to the county clerk a copy of the report the program submitted to the Guardianship Certification Board (Guardianship Certification Program of the Judicial Branch Certification Commission on September 1, 2014). EC §1104.257 (PC §697A(a)). The report gives the name, address, and telephone number of each individual employed by or volunteering or contracting with the program to provide guardianship services to a ward or a proposed ward of the program. A copy of the report form is shown in Appendix L.

D. Mental Health Cases

1. Driver's license.

Transportation Code §521.319(d) requires the clerk to notify the Department of Public Safety within 10 days after a court orders the involuntary treatment of a chemically dependent person under Subchapter D, Chapter 462, Health and Safety Code. Section 521.319(f) of the Transportation Code requires the clerk to notify DPS within 10 days after the order of involuntary treatment of the chemically dependent person expires. Appendix J, miscellaneous required reports, page 53.

2. Department of Public Safety monthly reports on incapacitated adults – federal firearm reporting.

The clerk must file with the Department of Public Safety a monthly report on persons ordered by the court to receive mental health services or committed

for long-term placement in a residential care facility for intellectual disability services. Gov't Code §§411.052 & 411.0521.

For mental health cases, the clerk reports the complete name, race, and sex of the person, the person's date of birth, and any identifying information such as social security number, drivers' license number, or state identification number, along with an electronic copy of the order of commitment. See VIII.C.4 above for more information and a link to the DPS website.

There are provisions that would allow the patient to remove the information from his or her records.

E. When a Physician is the Subject of a Guardianship or Mental Health Case

Occupations Code §160.102 states that "[n]ot later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent, the clerk of the court of record in which the finding is entered shall prepare and forward to the board a certified abstract of record, regardless of whether the adjudication or finding is subsequently withheld or appealed."

F. Funds in Registry Report

No later than March 1 of each year, the clerk must furnish to the court a report on all investments of funds in the Registry. EC §1355.052 (PC §887(b)). The report must contain:

- (1) the amount of the original investment or the amount of the investment at the last annual report, whichever is later;
- (2) any increase, dividend, or income from such investment since the last annual report;
- (3) the total amount of the investment and all increases, dividends, or income at the date of the report; and
- (4) the name of the depository or the type of investment.

IX. The Claims Docket

A. Decedents' estates – "claims" definition & "claims docket"

In decedent's estates, the definition of "claims" includes liabilities of a decedent that survive, including taxes, whether arising in contract or in tort or otherwise; funeral expenses; the expenses of a tombstone; expenses of administration; estate and inheritance taxes; and debts due such estates. EC §22.005 (PC §3(c)).

The Estates Code sets out very specific instructions to the clerk on maintaining record books titled "claim dockets" for all claims presented for court approval against a decedent's estate – even designating the heading for each of the required sixteen columns.

Clerk Responsibilities

EC §52.002 (PC §14). The clerk can keep the claims docket electronically in an Excel or other form of spreadsheet. EC §52.004 (PC §17).

B. Guardianships – “claims” definition & “claims docket”

In guardianships, a “claim” is defined as a liability against the estate of a minor or an incapacitated person or a debt due to the estate of a minor or an incapacitated person. EC §1002.005 (PC §601(4)).

For guardianships, too, the Code sets out very specific instructions to the clerk on maintaining record books titled “claim dockets” for all claims presented for court approval against a guardianship, down to the headings for each of the required sixteen columns. EC §1052.002 (PC §624). The clerk can keep the claims docket electronically in an Excel or other form of spreadsheet. EC §1052.004 (PC §627).

C. Notice procedures for guardianships and decedents’ estates

1. When a claim is presented.

If a claim in a decedent’s estate is presented by depositing with the clerk, the clerk shall enter the deposited claim in the claim docket and shall advise the representative of the estate, or the representative’s attorney, by letter mailed to the representative’s last known address. EC §355.002(a) (PC §308).

If a claim in a guardianship, the clerk follows the same procedure and advises the guardian of the estate, or the guardian’s attorney, by letter mailed to the guardian’s last known address. EC §1157.002(a) (PC §795).

2. When a claim is allowed or rejected, in whole or in part.

When personal representatives or guardians allow a claim in whole or in part or reject the claim in whole or in part, they file the allowance or rejection with the clerk who enters it on the claim docket. EC §355.053 (PC §311) and EC §1157.053 (PC §798).

Ten days after the personal representative or guardian has deposited the allowance or rejection of the claim with the clerk, the clerk forwards the claim and accompanying documents to the court so that the court may approve or reject the claim and classify the claim. EC §355.055 (PC §312(b)) & EC §1157.055 (PC §799(b)).

X. Criminal History Records

Over the years, the Texas Legislature has broadened the categories of people for whom county clerks must obtain criminal background checks from the Department of Public Safety (DPS) or the Federal

Bureau of Investigation. EC §1104.402 (PC §698) sets out the categories, which now include:

- Private professional guardians and those working for private professional guardians.
- Employees, contractors, and volunteers of guardianship programs who provide guardianship services on behalf of the guardianship program.
- Any person proposed to serve as a guardian other than the proposed ward’s family member or an attorney.

Depending on the circumstances, the clerk obtains the criminal history record from one of the following – from DPS, from the applicant directly, or from the Guardianship Certification Board (which will become the Guardianship Certification Program of the Judicial Branch Certification Commission September 1, 2014):

(1) In most cases, the clerk will search with DPS:

<https://records.txdps.state.tx.us/DpsWebsite/Index.aspx>
Click on Criminal History Conviction Search.

(2) An applicant may submit a report the applicant has obtained from the DPS or the FBI, but the report must be submitted at least ten days before the hearing to appoint the applicant as guardian, and the history must have been obtained not earlier than the 30th day before the hearing. EC §1104.403 (PC §698(a-5)).

(3) When the applicant for a guardianship is a certified guardian or a provisionally certified guardian, the clerk applies to the Guardianship Certification Board/Program, not DPS, for the required criminal check. EC §1104.404 (PC §698(a-6)). The form to request a copy of criminal history record information from the Program is in Appendix M and at <http://www.courts.state.tx.us/gcb/gcbhome.asp> on the Board/Program’s website. The clerk fills out the form, gets the Judge’s signature, and mails the completed form to the Guardianship Certification Board/Program. The report is returned to the clerk with a cover letter and the report in a sealed envelope addressed to the judge. There is no charge to the clerk for this service, though the clerk can charge the \$10.00 fee for this service per EC §1104.402(b) (PC §698(5)(e)). The data received from the Guardianship Certification Board/Program is **not** file-marked or put in the court’s file, but should be given to the judge.

All criminal history record information obtained by the clerk is privileged and confidential and for the sole use of the court. It is a Class A misdemeanor to release or otherwise disclose the criminal history record information to any person or agency except on court order or the consent of the person being investigated. The clerk may destroy the criminal

history information after the records are used as authorized by EC §1104.408 (PC §698).

The Department of Aging and Disability Services (DADS) must obtain criminal history records for employees and volunteers of DADS who provide guardianship services to wards of DADS. DADS is required to provide this criminal history record information to the Guardianship Certification Board/Program and, at the request of the court, is required to provide the information to the clerk. EC §§1104.406 & 1104.407 (PC §§698(a-1) to (a-4)).

XI. Electronic Filing

On December 11, 2012, the Texas Supreme Court issued Misc. Docket No. 12-9208, which **mandated** e-filing in **ALL** counties by July 1, 2016. See Appendix N and the materials for the Mandatory E-Filing presentation. Also see Section IV.H. above, discussing related changes in Government Code §§51.851 (electronic filing fee), 51.852 (electronic filing system fund), and 72.031 (electronic filing system).

The Order requires different beginning dates based on the size of the county. In the ten largest counties, attorneys must file all pleadings electronically beginning January 1, 2014.

WHAT ABOUT ORIGINAL WILLS? New Rule 21(f)(12) of the Texas Rules of Civil Procedure provides: “When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.”

WHAT ABOUT WILL COPIES? By administrative order, the Travis County Probate Court requires a party to file a will **copy** with the clerk within three business days after an application is electronically filed either (1) seeking to probate a copy of a will or (2) stating that a copy of a will is not being offered for probate. The Court believes that having the actual document that is being offered as the will copy will help the Court properly evaluate the document.

XII. Determining whether an ad Litem is Still Active on a Guardianship Case

An ad litem – attorney ad litem *or* guardian ad litem – is automatically discharged when the court either appoints a guardian or denies an application for appointment of a guardian **unless** the court order specifically states that the ad litem will continue to serve. EC §1054.002 (PC §645) for attorney ad litem; EC §1054.053 (PC §646) for guardian ad litem. Before 2007, the presumption was the opposite: an ad litem stayed on the case unless specifically discharged.

The automatic expiration of an attorney ad litem’s appointment does **NOT** apply, however, when the

court appoints a **temporary** guardian. In that case, an attorney ad litem’s appointment continues unless the court order provides for the termination or expiration of the attorney ad litem’s appointment. EC §1054.002(b) (PC §646(f)).

XIII. Access to Mental-Health Files

Only in certain specific instances may someone use, inspect, or copy any paper that is part of the mental-health docket. Tex. Health & Safety Code §571.015. Before this section was enacted in 1991, a clerk would at times have to determine whether the specific information requested “disclose[d] intimate details of the personal and private life of . . . the patient” or the patient’s family before determining whether the information requested could be disclosed. Tex. Rev. Civ. Stat. art 5547-12 (no longer in force); Op. Tex. Att’y Gen. No. JM-260 (1984). Under §571.015, however, the clerk no longer needs to evaluate the information requested: *every paper in the mental-health docket – including the docket book, indexes, and judgment books – is a “public record of a private nature” that may be released only in defined circumstances:*

- A paper from the mental-health docket may be used, inspected, or copied “under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.” Tex. Health & Safety Code §571.015(a).
- The clerk shall release papers from the mental-health docket “to an attorney representing the proposed patient in a proceeding held under this subtitle.” Tex. Health & Safety Code §571.015(d).
- This section “does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.” Tex. Health & Safety Code §571.015(e).

Although Local Government Code §§118.0217 & 118.011(b)(3) authorize a fee for a “mental health background check for license to carry a concealed weapon,” clerks should note that these sections “*do not affect the procedures for access to court records prescribed by Section 571.015, Health and Safety Code.*” Tex. Loc. Gov’t Code §118.0217(b) (emphasis added). Thus a written court order is required for release of the information requested for a mental-health background check.²

² An applicant for a license to carry a concealed handgun authorizes an inquiry into “any noncriminal history records that are necessary to determine the applicant’s eligibility for a license,” Tex. Gov’t Code 411.174(a)(9). Therefore, the judge

Clerk Responsibilities

The rules are no longer different for children under 12 years of age. Before 2005, an attorney ad litem or guardian ad litem appointed under Chapter 107 of the Family Code could access mental-health records of children under 12 years of age without any further court order. Now, “[a] medical, mental health, or drug or alcohol treatment record of a child that is privileged or confidential under other law may be released to a person appointed under Subsection (a) only in accordance with the other law.” Tex. Fam. Code §107.006.

XIV. Deposit of Will for Safekeeping during Testator’s Lifetime

A. Texas law permits a testator or an agent for the testator to deposit a will for safekeeping with the county clerk. EC §252.001 et seq. (PC §71). Upon receiving the \$5.00 fee for this service, the clerk **must accept and keep** the will. Under the statute, the clerk may not refuse to accept a will for safekeeping (although some clerks do refuse), but the clerk may require that certain proof concerning the testator’s identity and residence be presented before the clerk accepts the will for safekeeping. The method and requirement of proof shall be up to the county clerk. For example, Harris County requires a sworn affidavit. Thus, any person other than the testator who presents a will for safekeeping must make an affidavit stating that (1) he or she knows the will is testator’s last will and testament, (2) he or she is familiar with the signature of testator, and (3) the testator is a resident of the county.

B. Each will presented for safekeeping **must be indexed**, but is not recorded (nor is it copied, microfilmed, or imaged). The will is placed in a sealed wrapper, with the name, address, and signature of the testator on the wrapper. A numbered certificate of deposit is given to the person filing the will for safekeeping. Each certificate shall be numbered consecutively. EC §§252.002-.004.

C. The clerk should request from the depositor the name(s) and current address(es) of the party(ies) who – after the death of the testator – shall be notified of the deposit of the will. The names and addresses are indorsed on the sealed wrapper. The law does not specifically state how many names shall be given. Some counties request at least two names. EC §252.002.

D. If the testator wants the deposited will back during his or her lifetime, the clerk may deliver the deposited will only to the testator or to another person authorized by the testator in a sworn written order. In return, the person receiving the deposited will must surrender the

certificate of deposit issued for the will. At the clerk’s discretion, the clerk instead may accept and file the testator’s affidavit to the effect that the certificate of deposit has been lost, stolen, or destroyed. EC §§252.051-.052.

E. Upon the testator’s death – and after the clerk receives notice sufficient to convince the clerk that the testator is dead – the clerk shall notify the person(s) indorsed on the sealed wrapper, by registered mail, return receipt requested. EC §252.101. The clerk shall deliver the will to the persons on their request, taking a receipt for the delivery. EC §252.102. If the notice is returned as undeliverable or if no one has been specified on the wrapper, the clerk shall open the envelope and contact the person who was named executor in the deposited will, again by registered letter, return receipt requested. EC §§252.103-.104. The clerk would then deliver the will to the executor on the executor’s request, taking a receipt for the delivery. If the executor is deceased or if no executor is named in the will, EC §252.105 gives the clerk instructions on whom to notify.

F. ***The following are times when the clerk should check the index for wills filed under this section:***

- When application is filed for probate of estate as administration alleging no will.
- When application is filed for probate of estate for lost will.
- When application is filed for probate of estate for copy of will.
- When application is filed for determination of heirship saying no will found.
- When application is filed for probate of estate as court-created independent administration.
- When small estate affidavit is filed (statute says person had to die without a will).
- If clerk’s office is official repository for death certificates in county, when death certificate is filed.

If the clerk keeps the index required by Chapter 252 electronically, checking should be an easy task.

XV. Duty and Liability of Custodian of Estate Papers after Testator’s Death

A. If a party in possession of a testator’s last will believes that probate will not be necessary, the person can deposit the will with the county clerk pursuant to EC §252.201 et seq. (PC §75).

B. In many counties, the clerk will assign the will a cause number and index it under the testator’s name. Should another party come forward and wish to

will have grounds for the written order authorizing release of the records. See Tex. Health & Safety Code §571.015(b)(2).

probate the estate, all subsequent proceedings will be handled from the filing of the will.

In other counties, the clerk treats this deposit the same as if the will had been deposited for safekeeping during the testator's lifetime. EC §252.001 (PC §71). If the will is NOT given a cause number, it should at least be indexed so that it would be found when the clerk checks the index if someone later files an application for probate of the estate alleging no will, lost will, etc. See Section XIV above.

C. If the party who has possession of a testator's last will refuses to deliver the will to the court or to the named executor or administrator, a sworn written complaint may be filed. EC §252.202. A sworn written complaint may also be filed if a person refuses to deliver any papers belonging to the estate of a testator or an intestate person. When brought to the clerk's office, these complaints should be filed, assigned a cause number, and indexed under the testator's name. The judge shall issue a show cause order requiring the party to appear and show cause why the party should not deliver these papers to the court or to the named executor or administrator.

If, after proper return of citation, the judge determines that (1) the individual has the requested documents and (2) the documents have neither been delivered nor good cause shown as to why they have not been delivered, the judge may cause the individual to be arrested under a Writ of Attachment issued by the clerk and imprisoned until the documents are presented. EC §252.203. Additionally, such individual will be liable to any person aggrieved for all damages sustained by this refusal. EC §252.204.

XVI. Jurisdiction

The county clerk serving the court with probate and guardianship jurisdiction in their county should be aware of changes made by the 2011 Legislature to venue and jurisdiction sections for the court they serve so that they can more efficiently file cases in their courts.

Clerks serving a **statutory probate court** should be aware that changes to EC §32.007 (PC §4H) give the court jurisdiction for charitable trusts defined by Property Code Section 123.001. EC §1022.006 (PC §607E) gives the statutory probate court concurrent jurisdiction with the district court for a personal injury, survival, or wrongful death action by or against a person in their capacity as a guardian.

If the clerk is serving a **constitutional county court**, the clerk needs to be aware of EC §32.003 (PC §4D) and EC §1022.003 (PC §607B) when there has been a request for and an assignment of a statutory probate judge. The clerk will need to know if the entire proceeding or only the contested matter has been

transferred to the statutory probate judge so that the clerk can direct any pleadings to the proper judge.

XVII. Transfer of Case for Want of Venue

A. Decedent's Estate

When an application to transfer a probate proceeding is filed, the clerk should bring the application to the court's attention.

If a probate case is transferred for venue reasons, the clerk must make copy of the entire file in the case and transmit the *original* file to the court in the county in which venue is proper.³ EC §§33.101-.103 (PC §§8 & 8A). The clerk retains a copy of the file – hard copy or electronic copy, or both, depending on the clerk's policies. The best practice is to send the original file by certified mail, although the statute does not require it.

Another best practice when a case is transferred is for the clerk to *always* also send a certified copy of all entries in the judge's probate docket for the proceeding, although the statute *requires* the clerk to send this certified copy of the docket only in some cases. The statutory difference is probably unintentional. Compare EC §§33.102 & 33.103 (PC §8A) with EC §§33.053 & 33.101 (PC §8(b)).

B. Guardianship

When an application is filed to transfer a guardianship file for want of venue, the clerk issues a personal citation to be served on the surety of the guardian's bond and on the guardian if the guardian is not the applicant. EC §1023.004 (PC §613). The clerk should also bring the application to the court's attention for the setting of a hearing.

If the court grants the application authorizing the transfer on payment on behalf of the estate of all accrued costs, EC §1023.005 (PC §614), the clerk shall record any unrecorded papers of the guardianship required to be recorded. Then, on payment of the clerk's fee, the clerk shall transmit to the county clerk of the county to which the guardianship was ordered transferred:

- the original case file of the guardianship proceedings; and
- a certified copy of the index of the guardianship records.

EC §1023.006 (PC §615) (related PC §631 is repealed effective January 1, 2014). The clerk retains a copy of the file – hard copy or electronic copy, or both, depending on the clerk's policies. Again, the best practice is to send the original file by certified mail, although the statute does not require it.

³ In Travis County, the clerk retains the original order transferring the file, sending a certified copy to the county where the case is transferred.

Clerk Responsibilities

The clerk in the transferee county then sends the required certificate to the “old” county – a necessary step to make the transfer effective. EC §1023.007 (PC §616). For other actions the clerk in the transferee county needs to take, see section IV.E. on page 3, New Filings – Guardianship Cases Transferred into County.

XVIII. Vexatious Litigants

Many of you have seen instances where a customer has continued, against all rhyme or reason, to proceed with actions and lawsuits in your county. Generally, an individual can file anything he wants if the appropriate fee is tendered. In the past, the clerk and the court had no way to stop a litigant from filing whatever he wanted, regardless of whether the pleading was groundless or even if the entire case had already been litigated. In extreme cases, a motion for sanctions filed by an opposing party might not have any effect on the irrational litigant.

Some help arrived in 1997, when the Legislature created a new category of litigants: the Vexatious Litigant. A court in a prefiling order may now find a **pro se** plaintiff to be a vexatious litigant if it shows that there is not a reasonable probability that the plaintiff will prevail in his actions, and (1) the plaintiff has prosecuted at least five litigations **as a pro se litigant** in the last seven years adversely decided or without merit, or (2) the plaintiff has re-litigated matters already finally determined. See Tex. Civ. Prac. & Rem. Code §§11.001-.104. (Section 11.002 was amended in 2013 to clarify that the rules apply to attorneys only if they are proceeding pro se.)

If a justice or constitutional county court enters a prefiling order, the order applies to **ONLY** the court that entered the order. §11.101(d). But if a prefiling order is entered by a district or statutory county court, the order applies to **EVERY** court in this state. §11.101(e).

Once a party has been found to be a vexatious litigant, he or she cannot file – and the clerk cannot accept – any new litigation documents before obtaining permission from the local administrative judge. If the clerk mistakenly files an action by a vexatious litigant, any party may file with the clerk and serve on the plaintiff and other parties, a notice stating that the plaintiff is vexatious. Upon the filing of this notice, the court shall immediately stay the litigation and dismiss the case.

The clerk shall provide the Office of Court Administration (OCA) of the Texas Judicial System a copy of the order naming a person as a vexatious litigant. The OCA shall maintain its own list and send it out annually to the clerks of the State.

XIX. Funds in Registry of Court

The Probate Clerk is responsible for funds deposited into the registry from funds of minors or incapacitated persons and other funds tendered to the clerk for deposit. Texas Local Government Code §§117.052, 117.119, & 117.112. Chapter 117 of the Local Government Code (hereafter LGC) includes general provisions as well as detailed requirements for establishment of depositories and handling of depository accounts. **For counties with a population of 1.3 million or more**, Subchapter E gives additional requirements.⁴ See LGC §§117.021-.028 & 117.115-.118 for provisions regarding establishment of depositories. The following text highlights a few of the requirements once a county has selected a depository.

A. Transfer of funds to separate accounts

The clerk shall transfer any registry funds into a separate interest-bearing account when directed by a written order of court or when the clerk is required to under **EC §1355.051** (PC §887); LGC §117.053(c).

In counties with a population of 1.3 million or more, the clerk may transfer money deposited in the fund into a separate account in the absence of a contrary court order. LGC §117.125.

B. W-9s and Taxes

The clerk shall require that any person with an interest in an interest-bearing account submit appropriate tax forms (W-9) so the clerk can timely and appropriately report to the Internal Revenue Service interest earned on such funds. The clerk is authorized to pay any or all interest earned on funds deposited in this account to the Internal Revenue Service to satisfy tax withholding requirements without a court order. LGC §117.003.

C. Required reports and audits

If a county has a population of 190,000 or more and the Commissioners Court has provided a depository for registry funds, the clerk shall make a report under oath to the county auditor that reflects all funds received, disbursed, and on hand. The auditor shall prescribe the form and frequency of the report. LGC §117.058.

⁴ If you are in a county with a population of 1.3 million or more, Chapter 117 can be confusing. Everything in Subchapter E obviously applies (§§117.111-.126), but so do other sections that do not conflict with provisions in Subchapter E. And the connections are not always easy to see because the organization of topics in Subchapter E does not track the organization of the same topics in earlier Subchapters.

In counties with a population of 1.3 million or more, the funds are to be audited by the county auditor or by an independent certified public accountant or a firm of independent certified public accountants. The written report of such audit shall be delivered to the county judge, each county commissioner, and the county clerk not later than the 180th day after the last day of the fiscal year. LGC §117.123. SB357, effective June 14, 2013, extends the reporting period from 90 to 180 days, and allows the audit to be done by the county auditor.

D. Withdrawal or disbursement of funds

The clerk may disburse funds from this account only upon written order of the court, except for funds deposited under EC Chapter 1355 (PC §887) and for cash bonds for an appeal. LGC §§117.053(b) & 117.121(a).

“The clerk shall place on the check the style and number of the proceeding in which the money was deposited with the clerk.” LGC §117.053(b).

In counties with a population of 190,000 or more, “[e]ach check issued for the disbursement of the funds must be issued in accordance with the laws providing for registry fund depositories. Each check must be signed according to procedure established by the county auditor before delivery or payment.” LGC §117.058(c).

In counties with a population of 1.3 million or more, checks issued from the registry account require the counter-signature of the county auditor. LGC §117.121(b). But funds deposited under PC §887 are exempt from the requirements prescribed by LGC §121 for disbursements from registry funds.

In counties with a population of 1.3 million or more, if the recipient of the funds disbursed from this account submits a written request that the funds be transferred by electronic transfer and the clerk gives written approval and the auditor countersigns the approval, the funds can be transferred by electronic means. LGC §117.121(c). The clerk can, with approval of the recipient of the funds, charge a reasonable fee for this service. LGC §117.121(d).

E. Interest and fees

In counties with a population of 1.3 million or more, interest earned on funds deposited in the registry shall be paid *as earned*. Ten percent of the interest earned is paid to the county’s general fund to reimburse the county for the expenses of maintaining the registry fund, and the other 90 percent is credited to the account in the registry fund. When the money is withdrawn, the clerk pays out the original amount deposited and 90 percent of the interest earned on that amount. LGC §117.122.

In other counties, the county is compensated at the time funds are withdrawn. If the funds have earned interest, 10 percent of the interest earned from the account is paid into the county’s general fund, and 90 percent of the interest is credited to the account. LGC §117.054. If the funds were in a non-interest bearing account, the clerk deducts a fee of 5 percent of the withdrawal, not to exceed \$50. LGC §117.055.

F. Funds for unknown or missing persons on final account

In HB 2912, the 2013 Legislature added provisions to EC §362.011 directing the court on final settlement of an estate to order deposited into the registry of the court any funds remaining to which a person who is unknown or missing is entitled. The Court may appoint an attorney ad litem to represent that unknown or missing person. EC §53.104. The funds cannot be disbursed without a court order regarding their disposition. EC §362.011. The Court can order the funds to be sent to the comptroller after 6 months under EC §551.001(a).

G. Unclaimed funds

If funds deposited into the registry fund are considered abandoned under Property Code Chapters 72, 73, and 75, the clerk shall report to and deliver to the comptroller these funds without further action of the court. The dormancy period for funds deposited begins on the date of the final judgment in the action in which the funds were deposited, the 18th birthday of the minor for whom funds were deposited, or at a date the comptroller establishes. LGC §117.002.

XX. Interlocutory Appeals in Statutory Probate Courts

Although most practitioners in statutory probate courts have thought they already had the ability to take interlocutory appeals of some eleven different types of orders issued by the court, the Legislature in 2013 explicitly added statutory probate courts to the list of courts from which an interlocutory appeal may be taken. Tex. Civ. Pr. & Rem. Code §51.014(a). (SB 1083 & HB 1874)

XXI. Request to be Notified of all Pleadings in Guardianship Cases

Effective January 1, 2014, any person interested in a guardianship proceeding may file a written request with the clerk to be notified of all (or specific) pleadings filed in the proceeding. The person requesting the copies is responsible for the cost associated with the request and the clerk can require a deposit to cover those costs. EC §1051.252 (PC

Clerk Responsibilities

§632(j)). The clerk shall mail these copies to the person by regular first class mail. Citations in guardianship cases must contain a “clear and conspicuous statement” regarding this right to be notified of pleadings. EC §1051.102(d) (PC §633(b)).

**Appendix A. Texas Attorney General Opinion
No. JC-0323 (2001).**

January 5, 2001

Re: Whether a county clerk must file stamp an instrument immediately upon its delivery and acceptance for filing, and related questions (RQ-0264-JC)

Request by:

The Honorable Susan D. Reed
Bexar County Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

Opinion by:

JOHN CORNYN, Attorney General of Texas; ANDY TAYLOR, First Assistant Attorney General; CLARK KENT ERVIN, Deputy Attorney General - General Counsel; SUSAN D. GUSKY, Chair, Opinion Committee; Kymberly K. Oltrogge, Assistant Attorney General - Opinion Committee

OPINION:

A county clerk's written indorsement on an instrument of the date and time that the clerk received the instrument evidences the filing should it be questioned in court. *See Maddux v. Booth*, 108 S.W.2d 329, 331 (Tex. Civ. App.-Amarillo 1937, no writ); 36A C.J.S. *File* at 402 (1961); *see also Grogan v. Robinson*, 8 S.W.2d 571, 573 (Tex. Civ. App.-Dallas 1928, writ ref'd) (indicating that "file mark" evidences instrument's filing). You ask whether a county clerk must "file stamp" an instrument immediately at the time it is deposited in the clerk's office for recording or whether the clerk has "a reasonable time after delivery to file stamp the instrument."¹ (For the sake of brevity, we use the term "county clerk" or "clerk" to refer to a county clerk or the clerk's agent.) No statute expressly requires a clerk to file stamp an instrument. The clerk must mark the date and time on an instrument in some way immediately upon receiving it, however. File stamping is not the only means by which the date and time of delivery immediately may be noted, but it is the one about which you ask. *See* Request Letter, *supra* note 1, at 1. We accordingly limit our response to file stamping and not to any other methodology that may accomplish this purpose.

You ask two further questions regarding file stamping an instrument filed in a county clerk's office:

2. If your office determines a county clerk is statutorily required to file stamp all instruments at the time the instruments are delivered to the County Clerk, may a county clerk establish a "cut off" time prior to the actual closing time of the County Clerk's office in order to process (file stamp) the large number of instruments generally delivered to a county clerk's office several hours prior to the close of business?
3. Are instruments that are received by a county clerk's office through the mail to be given the same priority for filing as instruments that are personally delivered to a county clerk's office for filing?

We answer your third question first because it follows directly from your first question. We conclude, based upon *Jones v. MacCorquodale*, that an instrument delivered to a county clerk's office by mail must "be given the same priority as instruments that are personally delivered to a county clerk's office." *See Jones v. MacCorquodale*, 218 S.W. 59, 61 (Tex. Civ. App.-Galveston 1919, writ ref'd). And, in answer to your second question, we conclude that a county clerk may not close the clerk's office to the public without obtaining the approval of the court he or she serves.

Before we proceed, it may be helpful to define three terms that are used throughout the request letter: "file," "file stamp," and "record." *See* Request Letter, *supra* note 1, at 1-4. Each term denotes a part of the process by which an instrument is delivered to, filed by, and recorded by a county clerk's office: "As a rule, [when an instrument is delivered to a county clerk's office for filing,] a county clerk is required to initially determine whether a document will be accepted for filing and, if so, to properly note such filing, accept the fee, record the document (that is, make a copy of it), index it, and, if required to do so, return the original to the filer." 35 DAVID B. BROOKS, TEXAS PRACTICE: COUNTY AND SPECIAL DISTRICT LAW §10.9 (1989).

An instrument is "filed" when it is delivered to the clerk, or otherwise put in the clerk's custody or control, and accepted for filing and recording. *See Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993); *Biffle v. Morton Rubber Indus., Inc.*, 785 S.W.2d 143, 144 (Tex. 1990) (per curiam); *Birdwell v. State*, 996 S.W.2d 381, 382 (Tex. App.-Houston [14th Dist.] 1999, pet. ref'd); *Spellman v. Hoang*, 887 S.W.2d 480, 481 (Tex. App.-San Antonio 1994, no writ) (per curiam); *cf. Maddux*, 108 S.W.2d at 331 (stating that filing consists of delivery to clerk plus acceptance for record by clerk); *Jones*, 218 S.W. at 61 (stating that, in context of registration laws, instrument is filed "when deposited

¹ *See* Letter from Honorable Susan D. Reed, Bexar County Criminal District Attorney, to Honorable John Cornyn, Texas Attorney General (Aug. 4, 2000) (on file with Opinion Committee) [hereinafter Request Letter].

Clerk Responsibilities

for that purpose in the County Clerk's office, together with the proper recording fees"). Delivery may be in person, by mail, or in certain circumstances, electronically. See *TEX. LOC. GOV'T CODE §191.009*, ch. 195 (regarding electronic filing); 35 BROOKS, *supra*, §10.9; see also OFFICE OF COURT ADMINISTRATION, COUNTY CLERK PROCEDURE MANUAL II-30 (1998) ("Instruments for recording are quite often brought to the clerk's office personally but may also be mailed in for processing."). An instrument is considered filed when the clerk accepts the document for filing "regardless of the time at which it may subsequently be actually recorded." 35 BROOKS, *supra*, §10.9.

You use the term "file stamp" to refer to the process by which, when an instrument is delivered to the clerk's office, the instrument is inserted into a machine that stamps on the instrument the date and time. Telephone conversation with Ms. Pat Prows, Bexar County District Attorney's Office (Oct. 11, 2000). While we could not find a definition of the term, it appears synonymous with the term "file mark," which is a clerk's indorsement on an instrument that a document was filed. See *Grogan*, 8 S.W.2d at 573. For the purposes of this opinion, we use the term "file stamp" to denote a mark that a county clerk places upon an instrument stating the (presumably correct) date and time the instrument was received.

Recording consists of "copying the document and placing it in a proper book" or electronically recording a copy of the document. See *TEX. LOC. GOV'T CODE §191.009(a)*; 35 BROOKS, *supra*, §10.9. In general, under *section 191.001 of the Local Government Code*, the County Clerk must record "without delay . . . the contents of each instrument that is filed for recording and that the clerk is authorized to record." *TEX. LOC. GOV'T CODE §191.001(c)*. Section 193.001 of the same code directs the manner of recording generally:

(a) The county clerk shall record instruments filed for recording in the order that they are filed. The clerk shall record each instrument with any acknowledgment, proof, affidavit, or certificate that is attached to it.

(b) The clerk shall note at the foot of the record the date and time that the instrument was filed for recording.

(c) If an instrument that is filed for recording is acknowledged or proved in the manner prescribed by law for record, the clerk shall make a record of the names of the parties to the instrument in alphabetical order, the date of the instrument, the nature of the instrument, and the time that the instrument was filed. If required, the clerk shall give the person who

files the instrument a receipt stating this information.

(d) The clerk shall certify under the clerk's signature and seal of office the date and time that the instrument is recorded and the specific location in the records at which the instrument is recorded. After recording the instrument, the clerk shall deliver the instrument to the person who is entitled to it.

Id. §193.001. *Section 11.004 of the Property Code* provides specifically for recording an instrument related to real property:

A county clerk shall:

(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law;

(2) give a receipt, as required by law, for an instrument delivered for recording;

(3) record instruments relating to the same property in the order the instruments are filed; and

(4) provide and keep in the clerk's office the indexes required by law.

TEX. PROP. CODE §11.004(a); see also *id.* §11.001(a) ("To be effectively recorded, an instrument relating to real property must be . . . recorded in the county in which a part of the property is located.").

Nothing in the statutes expressly requires a county clerk generally to file stamp all instruments immediately at the time the instruments are delivered to the clerk's office. *Section 191.001 of the Local Government Code* and *section 11.004 of the Property Code*, which you believe are relevant, do not require a county clerk to file stamp an instrument either "without delay," *TEX. LOC. GOV'T CODE §191.001(c)* (requiring county clerk to record contents of instrument), or, with respect to an instrument relating to real property, "within a reasonable time after delivery," *TEX. PROP. CODE §11.004(a)(1)*. Both *section 191.001 of the Local Government Code* and *section 11.004 of the Property Code* designate the time at which an instrument must be recorded, not file stamped. Compare *TEX. LOC. GOV'T CODE §191.001(c)* ("without delay"), with *TEX. PROP. CODE §11.004(a)(1)* ("within a reasonable time after delivery"). Consequently, neither of these statutes expressly sets a time frame within which an instrument must be file stamped. Nor does *section 193.001 of the Local Government Code* expressly require a county clerk to file stamp an instrument immediately upon

filing. *See* Request Letter, *supra* note 1, at 2 (stating that county clerk “is required to note on the document the precise time that it was filed. . . . Thus, . . . county clerk must immediately file stamp the instrument.”). Section 193.001(b) requires a clerk to “note at the foot of the record the date and time that the instrument was filed for recording.” *TEX. LOC. GOV'T CODE §193.001(b)*. Section 193.001(b) does not indicate *when* the notation must be made, only what the notation “at the foot of the record” must state.

While we find no express statutory requirement, the statutes implicitly require the clerk to accurately note the date and time that an instrument is delivered. *See id.* §191.001(a), (b) (requiring clerk to record instruments “in the order they are filed” and to note “date and time” instrument is filed for recording); *TEX. PROP. CODE §11.004(a) (3)* (requiring clerk to “record instruments relating to the same property in the order the instruments are filed”). The county clerk’s indorsement on an instrument, for example, evidences the fact that a paper was filed at a particular time, and a court may rely upon that evidence. *See Maddux, 108 S.W.2d at 331* (quoting *Hanover Fire Ins. Co. v. Shader, 33 S.W. 112, 113 (Tex. 1895)*). “The indorsement upon the paper of the time of its reception is not, strictly speaking, a part of the operation of filing, but is a mere memorandum serving as evidence of the fact.” 36A C.J.S. *File* at 402 (1961); *see also Maddux, 108 S.W.2d at 331* (citing C.J.S.). The indorsement creates a refutable presumption regarding the date and time that the document was delivered to the court. *State v. Miller, Nos. 99CA2506 & 00CA2539, 2000 WL 1273467, at *2* (Ohio App. [4th Dist.] Aug. 31, 2000); 76 C.J.S. *Records* §6 (1994); *cf. Biffle, 785 S.W.2d at 144* (stating that instrument is deemed filed at the time it is delivered to clerk, regardless of whether instrument is file marked); *Birdwell, 996 S.W.2d at 382-83* (discussing use of file mark as evidence in civil and criminal cases). You suggest that this evidence may be particularly important in the case of real-property transactions. *See* Request Letter, *supra* note 1, at 4. A properly recorded instrument regarding real property notifies all persons of a transaction affecting the property. *TEX. PROP. CODE §13.002*. Where two opposing deeds purport to convey the same property, the first-filed deed controls disposition of the property. *See Anderson v. Barnwell, 52 S.W.2d 96, 101-02* (Tex. Civ. App.-Texarkana 1932) (indicating that first-filed instrument provides notice to later purchaser of same property interest), *aff'd in part sub nom. Anderson v. Brawley, 86 S.W.2d 41* (Tex. 1935); *Hooks v. Neill, 21 S.W.2d 532, 540* (Tex. Civ. App.-Galveston 1929, writ ref'd) (same); *Raley v. Magendie, 116 S.W. 174, 175* (Tex. Civ. App. 1909, writ ref'd) (same).

Court rules also may require the clerk to indorse an instrument immediately upon accepting the instrument for filing. Rule 24 of the Texas Rules of Civil Procedure, for example, requires a county clerk to indorse, “when a petition is filed,” upon the petition “the file number, the day on which [the petition] was filed and the time of filing, and” to sign his or her name “officially” on the instrument. *TEX. R. CIV. P.24*. And the Office of Court Administration suggests that a county clerk file mark an instrument showing the date and time received “upon receipt.” *E.g., OFFICE OF COURT ADMINISTRATION, COUNTY CLERK PROCEDURE MANUAL III-5* (1998) (“Initial Filing Procedures” for criminal case); *id.* IV-11 (“Initial Filing Procedures” for civil case); *id.* IV-14 (“Subsequent Filing Procedures” for additional instruments in civil case); *id.* V-13 (filing of probate cases).

We consider next your third inquiry: whether an instrument that is received by a county clerk’s office through the mail is to be given the same priority for filing as an instrument that is personally delivered for filing. *See* Request Letter, *supra* note 1, at 1. You believe that a county clerk must file stamp “all instruments received through mail deliveries during the day at the time of delivery rather than file stamping all instruments received through the mail throughout a particular business day at a certain time later in the day.” *Id.* at 3. We thus understand you to ask whether an instrument must be file stamped at the time the instrument is delivered, whether the instrument is delivered through the mail or in person.

We conclude that a county clerk must indorse the date and time that an instrument is received immediately upon receiving it in the clerk’s office, whether the instrument is delivered in the mail or in person. Under *Jones v. MacCorquodale, 218 S.W. 59* (Tex. Civ. App.-Galveston 1919, writ ref'd), an instrument delivered to a county clerk’s office, whether by mail or in person, is entitled to be noted as filed at the date and time of delivery:

So far as we are aware, there is no particular method of getting an instrument into the clerk’s office for the purpose of filing required. If it is deposited there with that objective by mail, by messenger, or is even handed to the clerk elsewhere, and afterwards carried there by him, it becomes entitled to record upon its arrival or deposit in his office.

Id. at 61. When the document is filed, it is likewise deemed recorded. *See TEX. LOC. GOV'T CODE §191.003*.

We finally address your second question: If a county clerk is “statutorily required to file stamp all instruments at the time the instruments are delivered to

Clerk Responsibilities

the County Clerk,” may the clerk “establish a ‘cut-off’ time prior to the actual closing time of the” clerk’s office to file stamp “the large number of instruments generally delivered . . . several hours prior to the close of business”? Request Letter, *supra* note 1, at 1. As predicate to your question, you state that the Bexar County Commissioners Court requires all county employees to work forty hours per work week, although the Commissioners Court has not specified any hours during which Bexar County offices must be open. *See* Request Letter, *supra* note 1, at 3. You further indicate that the Bexar County clerk is contemplating closing his or her office to the public at 3:30 each workday afternoon to file stamp all instruments “prior to close of business on the day the instruments are delivered.” *Id.* All employees would be working forty hours each work week, which, you state, is consistent with the Bexar County Personnel Rules. *See id.*

Past decisions of this office considering how authority is divided between a county official and the county commissioners court do not dispose of a situation involving the County Clerk’s authority. Between a county official, such as a county clerk, and the county commissioners court, the county official has sufficient discretion to administer the office as the official wishes to accomplish its constitutional and statutory duties. *See* Tex. Att’y Gen. Op. No. JC-239 (2000) at 3. So long as county employees working in the official’s office do not violate a county’s forty-hours-a-week work requirement, the commissioners court, in executing its authority over the county budget, may not interfere with the elected official’s decisions. *See id.* at 1. Thus, a county clerk need not obtain the approval of the county commissioners court to change the hours the clerk’s office is open to the public, so long as county employees comply with the commissioners court’s forty-hours-a-week work requirement.

While the county commissioners court’s budgetary authority does not authorize it to interfere in the setting of the County Clerk’s office hours, the clerk must obtain the approval of the courts the clerk serves if the clerk wishes to change the hours his or her office is open to the public. A county clerk is subject to the authority of the judiciary and “receives documents for filing on behalf of” a court. *See Stokes v. Aberdeen Ins. Co.*, 917 S.W.2d 267, 268 (Tex. 1996) (per curiam). The clerk is, consequently, “subject to the court’s direction and control in exercising ministerial duties such as filing documents.” *Id.* Additionally, the courts may have to revise court rules if they approve the County Clerk’s proposal. *See, e.g.*, BANKR. N.D. TEX. LOC. R. app. C (listing clerks’ office hours); 5TH TEX. APP. (DALLAS) LOC. R. 3(a) (listing normal court business hours for receiving faxes

Monday through Friday “from 8:00 a.m. to 5:00 p.m. central time”); 10th TEX. APP. (WACO) LOC. R. 4 (listing normal court business hours as Monday through Friday, “8:00 a.m. to 5:00 p.m.”).

SUMMARY

While a county clerk is not expressly required by statute to file stamp the date and time an instrument arrives in the clerk’s office for filing upon receiving and accepting the instrument, the County Clerk must devise some method for immediately and accurately noting that date and time. Just as the clerk must develop a method for noting the date and time a particular instrument is delivered in person, so must the clerk develop a method for noting the date and time of delivery of an instrument that arrives in the mail.

A county clerk must obtain the approval of the judiciary he or she serves before changing the hours the clerk’s office is open to the public.

Appendix B. Civil Case Information Sheets.

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: _____ Email: _____		Plaintiff(s)/Petitioner(s): _____		<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: _____ Telephone: _____		Defendant(s)/Respondent(s): _____			
City/State/Zip: _____ Fax: _____		[Attach additional page as necessary to list all parties]		Additional Parties in Child Support Case:	
Signature: _____ State Bar No: _____				Custodial Parent: _____	
				Non-Custodial Parent: _____	
				Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
<i>Civil</i>			<i>Family Law</i>		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order	
Employment		Other Civil		Parent-Child Relationship	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Tax		Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	

Instructions for Completing the Texas Civil Case Information Sheet

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. If the original petition, application or post-judgment petition or motion is e-filed, the case information sheet must not be the lead document.

This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical and administrative purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

The attorney or self-represented (*pro se*) plaintiff/petitioner filing the case or post-judgment motion should complete the sheet as follows:

1. Contact information

a) Contact information for person completing case information sheet. Enter the following information:

- name;
- address;
- city, state, and zip code;
- email address;
- telephone number;
- fax number, if available;
- State Bar number, if the person is an attorney; and
- signature. (*NOTE: When a case information sheet is submitted electronically, the signature may be a scanned image of “/s/” and the name of the person completing the case information sheet typed in the space where the signature would otherwise appear.*)

b) Names of parties in the case. Enter the name(s) of the:

(*NOTE: If the name of a party to a case is confidential, enter the party’s initials rather than the party’s name.*)

- plaintiff(s) or petitioner(s);
- defendant(s) or respondent(s); and
- in child support cases, additional parties in the case, including the:
 - custodial parent;
 - non-custodial parent; and
 - presumed father.

Attach an additional page as necessary to list all parties.

c) Person or entity completing sheet is. Indicate whether the person completing the sheet, or the entity for which the sheet is being completed, is:

- an attorney for the plaintiff or petitioner;
- a *pro se* (self-represented) plaintiff or petitioner;
- the Title IV-D agency; or
- other (provide name of person or entity).

2. Case type.

Select the case category that best reflects the most important issue in the case. *You must select only one.*

3. Procedure or remedy.

If applicable, select any of the available procedures or remedies being sought in the case. You may select more than one.



SUPPLEMENTARY PROBATE CASE INFORMATION SHEET
TRAVIS COUNTY PROBATE COURT NO. 1

CAUSE NO. C-1-PB-_____ - _____

This sheet is a supplement to the Civil Case Information Sheet required by Texas Rule of Civil Procedure 78a. Both the Civil Case Information Sheet and this supplementary sheet should be completed whenever an original petition or application is filed in this Court. Except for the case style, there's no duplication between the two sheets. If you are e-filing the original petition or application, an information sheet cannot be the lead document.

The information should be the best available at the time of filing, understanding that the information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial.

1. Case style. Please indicate the correct case style. For example, "Estate of Decedent's name," "Guardianship of the Person and Estate of Proposed Ward's name," or "Plaintiff(s) v. Defendant(s)." If "Plaintiff v. Defendant," list all parties; attach additional page as necessary (an estate or guardianship cannot be a party; it's the executor, administrator, or guardian who has the capacity to sue or be sued).

2. Related case(s). Has this case been previously filed, or is it related to a case previously filed in this court or in another court?

No

Yes, in this court. Cause No. C-1-PB-_____ - _____

- new case is guardianship after 1102; will be same cause number

- new case is guardianship after chapter 48; new cause number & new style

Yes, in another court:

Court: _____ Cause No. _____

Attach page(s) as needed. If you are attaching page(s) with information about additional related cases, check here:

3. Indicate case type (check only one):

Independent Administration	All Other Estate Proceedings	Ancillary Cases (new cause #)
<input type="checkbox"/> Probate Letters Testamentary (independent) (PBL + 3020) <input type="checkbox"/> Indep. Admin., Will Annexed (PAI + 3030) <input type="checkbox"/> Indep. Admin. with Heirship (PAH + 3032) <input type="checkbox"/> Foreign Will Letters (independent) (PWL + 3102)	<input type="checkbox"/> Probate Muniment of Title (PMU + 3021) <input type="checkbox"/> Muniment of Title more than 4 years after date of death (PMU + 3021) <input type="checkbox"/> Heirship / No Administration (PHE + 3033) <input type="checkbox"/> Small Estate Affidavit (PSM + 3040) <input type="checkbox"/> Foreign Will Recording <u>only</u> (PWR + 3044) <input type="checkbox"/> 252 Will Deposit or Application to Produce Will (PWD + 3041) <input type="checkbox"/> 151 Application to Open Safety Deposit Box (PDB + 3103) <input type="checkbox"/> 152 Emergency Intervention (funeral, burial, rental) (PEI + 3104) <input type="checkbox"/> 1355 Custodial Account (887 + 3014) <input type="checkbox"/> 1351 Sale of Property of Minor (PSP + 3035)	<input type="checkbox"/> Ancillary action related to an Independent Administration (includes court-ordered severance) (PIA + 3115) <input type="checkbox"/> Ancillary action related to a Dependent Administration (includes court-ordered severance) (PDA + 3116) <input type="checkbox"/> Ancillary action related to Guardianship of an Adult (includes court-ordered severance) (PAA + 3117) <input type="checkbox"/> Ancillary action related to Guardianship of a Minor (includes court-ordered severance) (PAM + 3118) <input type="checkbox"/> Ancillary action that is in this court because a trustee is a party (includes court-ordered severance) (PTP + 3119)
Dependent Administration	Guardianship / 1301 Trust – Adult	Guardianship / 1301 Trust – Minor
<input type="checkbox"/> Dependent Administration (<u>all</u> dependent administrations: executor, will annexed, with heirship, or with heirship to follow) (PAD + 3031) <input type="checkbox"/> Temporary Administration (PAT + 3019) <input type="checkbox"/> Foreign Will Letters (dependent) (PW1 + 3043)	<input type="checkbox"/> Guard'ship Adult Person only (PG1 + 3023) <input type="checkbox"/> Guard'ship Adult Estate only (PG2 + 3024) <input type="checkbox"/> Guard'ship Adult Per & Estate (PG3 + 3022) <input type="checkbox"/> Guard'ship Adult Temporary (PGT + 3027) <input type="checkbox"/> 1301 or QIT Trust Adult (867 + 3016) <input type="checkbox"/> 1252 Appointment of Non-Resident Guardian – Adult (PNA + 3108) <input type="checkbox"/> 1353 Incapacitated Spouse; Community Property (883 + 3015)	<input type="checkbox"/> Guard'ship Minor Person only (PM1 + 3047) <input type="checkbox"/> Guard'ship Minor Estate only (PM2 + 3049) <input type="checkbox"/> Guard'ship Minor Per & Estate (PM3 + 3025) <input type="checkbox"/> Guard'ship Minor Temporary (PMT + 3105) <input type="checkbox"/> 1301 Trust Minor (86M + 3106) <input type="checkbox"/> 1252 Appointment of Non-Resident Guardian – Minor (PNM + 3107)
	1102 Investigations & Chapter 48	All Other Cases
	<input type="checkbox"/> Court Initiated / 1102 (PCI + 3028) <input type="checkbox"/> Chapter 48 Protection (PEL + 3122)	<input type="checkbox"/> Trust action <u>not</u> related to estate or guardianship (PBT + 3018) (<i>if related to estate or guardianship, see "ancillary cases" above</i>) <input type="checkbox"/> 1354 Receivership of Minor or Incapacitated (PRM + 3120) <input type="checkbox"/> 1356 Contracts of Minors (PCM + 3121)

Appendix C. Presiding Statutory Probate Judge Administrative Order on Ancillary Cases, with Attached Instructions

**Presiding State Statutory Probate Judge
Administrative Order 2006-14**

WHEREAS it has been brought to the attention of the Presiding Statutory Probate Court Judge that the lack of uniformity of the file management of probate and guardianship proceedings by the County Clerks of the Statutory Probate Courts of Texas has caused difficulties and confusion for litigants and lawyers in some counties; and

WHEREAS the Statutory Probate Judges believe there should be uniformity in approach in the file management of cases involving probate and guardianship proceedings including, but not limited to, the proper classification of ancillary matters and the proper filing and numbering of contested probate and guardianship proceedings;

It is therefore **ORDERED** that no later than January 1, 2007, the Clerks of all Statutory Probate Courts shall file all original probate and guardianship proceedings and related matters according to the attached instructions and shall give to each ancillary probate or guardianship proceeding either (1) an ancillary sub-docket designation of the main cause number with a new alphabetic or numeric suffix or (2) a new cause number linked to the main cause number under a related case filing system.

At each Court's discretion, any other matter related to a probate or guardianship proceeding may be severed as an ancillary proceeding and given a new sub-docket designation or new, related cause number as indicated above.

Costs, if any, for this filing are waived.

Signed on the 23rd day of October 2006.

Guy Herman, Presiding Judge
Statutory Probate Courts of Texas

**Instructions for Filing Probate and Guardianship Proceedings,
Related Matters, and Ancillary Proceedings:
Updated Attachment to Presiding State Statutory Probate Judge Administrative Order 2006-14**

Guy Herman, Presiding State Statutory Probate Judge

The purpose of these instructions is to describe which actions should be filed in a principal probate or guardianship file and which other actions are ancillary and should be placed in a new file. While any stage of a probate or guardianship proceeding can be contested, it is usually the contested matters *that bear no direct relationship to the administration of the estate* that are “ancillary” and must be given a new cause number. (To ensure the new case is linked to the principal file, follow the next page on “how to style an ancillary case.”) By way of illustration and not definition, the following lists are examples of matters that belong in the principal file and examples of matters that belong in an ancillary file:

A. Core matters that belong in the principal file (“base case”). Matters that are principally concerned with the administration of the estate are “core” matters and should be filed under the main cause number. Examples include:

1. Appointment of guardian; probate of will; determination of heirship (with or without request for administration)

After the death of a ward, any probate proceedings must be filed in a new cause and cannot be filed in the guardianship case, whether the ward died testate or intestate.
2. **Contest to will, heirship, administration, or guardianship (before or after grant of letters)**
3. **Contest or objection to actions during administration (sales, fees, accountings, etc.)**
4. **Declaratory Judgments to construe/interpret provisions of a will *before* the will is admitted to probate**

In a Muniment of Title proceeding, the following actions *must* be filed as part of the base case and heard contemporaneously with the admission of the will to probate: A Declaratory Judgment to construe who the distributees under the will are, and any Heirship Determination to resolve a partial intestacy under the will.
5. An action to construe and interpret provisions of a Testamentary Trust *before* the will has been admitted to probate
6. All claims pursuant to claims-presentation process
7. Removal of personal representative
8. §5B/§608 motions to transfer an ancillary case (but if the transfer comes in, it will go in an ancillary-case file)
9. Release of the Independent Executor pursuant to 149E (declaratory judgment)

Any of the proceedings described as belonging in the “base case” may be severed as an ancillary proceeding at the court’s discretion. This severance would be appropriate for proceedings that are potentially voluminous, for example.

B. Ancillary matters that belong in a different file with a new designation (“ancillary case”).

Contested matters that bear no direct relationship to the administration of the probate estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.) should be filed in a new cause number. Examples include:

1. **Declaratory Judgments to construe/interpret provisions of a will *after* the will is admitted to probate**
2. An action to construe and interpret provisions of a Testamentary Trust *after* the will has been admitted to probate
3. Any action involving a Testamentary Trust *other than* construction issues (e.g. removal of a trustee)
4. Intervivos Trust Action (settler is decedent in probate pending in subject court)
5. All §867 trusts must be filed in a new cause number, whether or not the §867 trust is related to a base case.
6. Foreclosure of preferred debt and lien
7. Actions for the trial of title to land and enforcement of liens thereon
8. Actions for the trial of right to property
9. Interpleader actions (funds tendered into registry during administration)
10. Divorces, child custody, paternity actions
11. Claims such as personal injury claims or suits on a claim that was rejected in its entirety or in part
12. In addition, a Bill of Review should be filed in an ancillary cause number (even though it has a direct relationship to the administration)

Appendix D1. TRCP Rule 21c. Privacy Protection for Filed Documents.

(a) **Sensitive Data Defined.** Sensitive data consists of:

- (1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number; and
- (3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

(b) **Filing of Documents Containing Sensitive Data Prohibited.** Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) **Redaction of Sensitive Data; Retention Requirement.** Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

(d) **Notice to Clerk.** If a document must contain sensitive data, the filing party must notify the clerk by:

- (1) designating the document as containing sensitive data when the document is electronically filed; or
- (2) if the document is not electronically filed, by including, on the upper lefthand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

(e) **Non-Conforming Documents.** The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) **Restriction on Remote Access.** Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

Appendix D2. Texas Attorney General Opinion No. GA-0519 (2007).

February 28, 2007 (after the 2/21/07 opinion, which follows on the next column)

Re.: Release and redaction of social security numbers under the Public Information Act, *section 552.147 of the Government Code* (RQ-0418-GA)

Request by:

The Honorable Roy Cordes, Jr.
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469-3 108

Opinion by:

Greg Abbott, Attorney General of Texas

OPINION:

In Attorney General Opinion GA-0519, we opined that the social security number ("SSN") of a living person is confidential and subject to mandatory exception from required disclosure under section 552.147(a) of the Public Information Act ("PIA"). *See generally* Tex. Att'y Gen. Op. No. GA-0519 (2007). As we stated in our opinion, ". . . Texans have a legitimate expectation that their SSNs will be kept confidential." *See id* at 5. The plain text and legislative history of *TEX. GOV'T CODE §552.147*, coupled with numerous other state and federal statutes, all clearly protect the confidentiality of SSNs, and thereby prohibit governmental bodies from disclosing SSNs under the PIA.

Immediately after the opinion was issued, legislative leaders contacted this office with serious concerns about logistical implications surrounding the rapid implementation of statutorily-mandated SSN confidentiality. Complex problems were faced by county clerks responsible for decades-old documents that are frequently laden with SSNs. Some clerks were left grappling with transitioning to a law that ensures SSNs are always kept confidential. The real-world consequence was a virtual halt to a tremendous amount of business and commerce in Texas. In response to these problems, a number of legislators have stated their intention to take immediate action to address the issues and conclusions discussed in Opinion No. GA-0519.

In light of these developments, I hereby abate Opinion No. GA-0519 for a period of 60 days in order to allow the Legislature ample time for thorough deliberation and action. During the time of this abeyance, Opinion No. GA-0519 will have no force or effect.

February 21, 2007 OPINION:

Your predecessor asked a number of questions about a county clerk's duties under section 552.147 of the Public Information Act (the "PIA").¹ See *TEX. GOV'T CODE* §552.147; see generally *id.* §§552.001-.353. In general, the questions focus on how a governmental body must treat social security numbers ("SSNs") contained in documents subject to the PIA. Specifically, we are asked:

1. Whether Section 552.147 . . . is permissive or mandatory in relation to *Section 552.007 of the Government Code* that prohibits selective disclosure?
2. Whether Section 552.147 . . . applies to all county clerk records (i.e., real property, birth records, death records and marriage records[])[?]
3. Whether Section 552.147 . . . authorizes the County Clerk to permanently redact a [SSN] from the original, filed document?
4. If Section 552.147 . . . authorizes a county clerk to redact [SSNs] from either an original, filed document or a copy requested under the [PIA], can the County Clerk certify the document as "certified copy[]"[?]
5. If the County Clerk may certify a document that contains a redacted [SSN] as a "certified copy" of the original document, must the certification stamp include a disclaimer that the document has been altered (i.e., that a [SSN] has been redacted)?
6. If county clerk documents are available to the public via the [I]nternet, does Section 552.147 . . . or any other law[] require the redaction of all [SSNs] prior to their availability on the [I]nternet?
7. Section 552.147 . . . addresses the [SSNs] of "living persons." How is a governmental body to determine whether a document contains a [SSN] of a living person?

Request Letter, *supra* note 1, at 1-2. We address each of the questions in turn.

I. Whether Section 552.147 Is "Permissive or Mandatory"

¹ See Letter from Honorable Ben W. "Bud" Childers, Fort Bend County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Nov. 18, 2005) (on file with the Opinion Committee, also available at <http://www.oag.state.tx.us>) [hereinafter Request Letter].

In general, the PIA requires a governmental body to make its information available to a member of the public upon request. See *TEX. GOV'T CODE* §§552.021, .221. The PIA also provides a number of exceptions, which are specific to particular types of information, to this general rule of required disclosure. See generally *id.* §§552.101-.147. The Seventy-ninth Legislature added such an exception for the SSN of a living person. See Act of May 20, 2005, 79th Leg., R.S., ch. 397, §1, 2005 Tex. Gen. Laws 1090, 1091 (Senate Bill 1485). This exception provides:

§552.147. Exception: Social Security Number of Living Person.

(a) The [SSN] of a living person is excepted from the requirements of Section 552.021 [i.e., the general disclosure requirement].

(b) A governmental body may redact the [SSN] of a living person from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

TEX. GOV'T CODE §552.147.

The first question is whether section 552.147 "is permissive or mandatory in relation to Section 552.007." Request Letter, *supra* note 1, at 1, 2-3. Section 552.007 of the PIA provides that a governmental body may "voluntarily mak[e] part or all of its information available to the public, *unless the disclosure is expressly prohibited by law or the information is confidential under law.*" *TEX. GOV'T CODE* §552.007(a) (emphasis added). Thus, a governmental body is prohibited from disclosing information that is confidential by law. See *id.* §§552.007, .101. Moreover, disclosing confidential information under the PIA is a criminal offense. See *id.* §552.352. Therefore, to answer this question we will analyze whether 552.147 makes the SSNs of living persons confidential.

Section 552.147(a) provides that SSNs of living persons are excepted from required public disclosure. We will first analyze whether section 552.147(a) makes SSNs confidential under law, such that governmental bodies are prohibited from disclosing SSNs. Then we will discuss the impact of section 552.147(b) on our analysis.

A. Construction of Section 552.147(a)

In construing a statute we may consider, among other things, (1) legislative history, (2) common law or former statutory provisions, including laws on the same or similar subjects, (3) the circumstances surrounding the statute's enactment, (4) the consequences of a particular construction, and (5) the

Clerk Responsibilities

administrative construction of the statute. See *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing section 311.023, Government Code). To determine whether SSNs are made confidential under section 552.147(a), we will consider each of these in turn.

1. Legislative History

In the Bill Analysis for section 552.147, the “Author’s/Sponsor’s Statement of Intent” refers to an attorney general ruling which recognizes that SSNs are “confidential” under the PIA in some circumstances, but not all. See SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. S.B. 1485, 79th Leg., R.S. (2005) (quoting Tex. Att’y Gen. OR2004-1475, at 2). The Statement of Intent then points out that knowing disclosure of “confidential information” is a criminal offense under the PIA. See *id.* Then, rather than explicitly stating whether the bill makes SSNs confidential in all circumstances, the Statement of Intent provides simply that the bill will deal with SSNs by “exempting them from the Public Information Act.” *Id.*

Although the Statement of Intent does not give a definitive answer regarding confidentiality, it seems unlikely that the Statement of Intent would focus on information that is confidential under the PIA if section 552.147 was not intended to make SSNs confidential in the first place. Thus, the Bill Analysis lends some weight to the conclusion that section 552.147(a) makes SSNs confidential.

2. Statutes Providing for Confidentiality of SSNs

To construe section 552.147(a), we also examine the statutory framework existing at the time of its enactment. We find that although the confidentiality of SSNs is reflected throughout statutory law, and although both Congress and the Texas Legislature recognize the serious privacy concerns raised by the public disclosure of an individual’s SSN, prior to section 552.147’s enactment there was no comprehensive prohibition against governmental entities’ public disclosure of SSNs.

As early as 1974 with the enactment of the Privacy Act, Congress acknowledged a privacy right in SSNs and sought to “curtail the expanding use of [SSNs] by federal and local agencies” and, consequently, “eliminate the threat to individual privacy and confidentiality of information posed by [the use of SSNs as] common numerical identifiers.” *Doyle v. Wilson*, 529 F. Supp. 1343, 1348 (D.C. Del. 1982); see 5 U.S.C.A. §552a (West 1996 & Supp. 2006). The Senate Report on the adoption of the Privacy Act described the universal use of SSNs as identifiers as “one of the most serious manifestations of privacy concerns in the Nation.” S. REP. NO. 93-

1183 (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6943.

The Social Security Act makes confidential a SSN obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990 (this provision of the Social Security Act was enacted in 1990). See Pub. L. No. 101-624, 104 Stat. 3359 (codified as amended at 42 U.S.C.A. §405(c)(2)(C)(viii)(I) (West Supp. 2006)); Tex. Att’y Gen. ORD-622 (1994) at 3. Thus, when a Texas governmental body obtains or maintains a SSN pursuant to a provision of law and the provision of law was enacted on or after October 1, 1990,² the SSN is confidential under the Social Security Act and excepted from public disclosure under section 552.101 of the PIA. See Tex. Att’y Gen. ORD-622 (1994) at 3, 6. And, under the Social Security Act, the disclosure of a SSN in violation of federal law is a felony. See 42 U.S.C.A. §408(a)(8) (West. Supp. 2006).

The Texas Legislature, recognizing the need for SSNs to be kept confidential, has repeatedly acted to prohibit disclosure of SSNs maintained by entities in both the private and public sector. For SSNs maintained by private entities, for example, Texas law broadly prohibits a person from intentionally communicating or making available to the public a person’s SSN. See TEX. BUS. & COM. CODE §35.58(a). In addition, subject to several exceptions, a person may not require an individual to disclose his or her SSN to obtain goods or services or enter a business transaction with the person unless the person adopts a privacy policy and maintains the confidentiality and security of a SSN disclosed to the person. See *id.* §35.581.

For government records, Texas law outside of the PIA explicitly protects SSNs in countless ways. When people have children or pay child support, the law prohibits public disclosure of the SSNs in the relevant records. See TEX. HEALTH & SAFETY CODE §192.002(c); TEX. FAM. CODE §231.302(e). SSNs are confidential when people provide them as voters, see

² See, e.g., TEX. ELEC. CODE §13.004 (SSNs obtained by voter registrar); TEX. FAM. CODE §154.185 (SSNs obtained by Title IV-D agency from parent providing health insurance to child); *id.* §234.001 (SSNs in state case registry of child support orders); TEX. GOV’T CODE §62.001(c)(2) (SSNs furnished to Secretary of State for jury wheel); *id.* §411.042(b)(6) (SSNs collected by Department of Public Safety); TEX. HEALTH & SAFETY CODE §193.001(b) (SSNs on death certificates); TEX. OCC. CODE §1702.110 (SSNs in application for license to conduct business as investigative company or security service contractor); TEX. TAX CODE §162.016 (SSNs obtained by Comptroller in copy of shipping document relating to importation and exportation of motor fuel); TEX. TRANSP. CODE §501.0235 (SSNs obtained by Department of Transportation in application for certificate of title).

TEX. ELEC. CODE §§13.004(b), 18.066(b), 65.060, as utility customers, *see TEX. UTIL. CODE* §182.052, and as property taxpayers, *see TEX. TAX CODE* §11.48. When people buy or sell real property, they may remove their SSNs from property instruments before the instruments are filed. *See TEX. PROP. CODE* §11.008(b)-(c). When someone applies for a license to practice an occupation or a license to drive a car, the SSN provided on those applications is protected from public disclosure. *See TEX. OCC. CODE* §59.001; *TEX. TRANSP. CODE* §521.044(a). The Transportation Code prohibits disclosure of SSNs when individuals apply for a certificate of title for their cars and even when a person subscribes to the Department of Transportation's "Texas Highways" magazine. *See TEX. TRANSP. CODE* §§204.011(a), 501.0235(b). When persons serve as jurors and grand jurors, their SSNs are confidential in the hands of both the court and the prosecuting attorney. *See TEX. CODE CRIM. PROC. ANN. arts. 19.42(a)*, 35.29. The Comptroller must keep confidential the SSNs of owners of abandoned property. *See TEX. PROP. CODE* §74.104(b). The Department of Health must protect the confidentiality of SSNs of medical assistance recipients. *See TEX. HUM. RES. CODE* §32.042(g). The Workers Compensation Division of the Department of Insurance is specifically required by statute not to disclose workers compensation claimants' SSNs. *See TEX. INS. CODE art. 5.58(d)*. The SSN of a sexual predator victim is privileged from disclosure in court proceedings. *See TEX. HEALTH & SAFETY CODE* §841.1462. Disclosure of blood donors' SSNs is prohibited under two provisions in Texas law. *See id.* §§81.103(g), 162.007(c). Three laws except the SSNs of sex offenders from public disclosure. *See TEX. CODE CRIM. PROC. ANN. arts. 62.005(b)(1)*, .053(f)(1), .055(g)(1).

Furthermore, the PIA itself contains several exceptions to required disclosure of SSNs (in addition to section 552.147) in certain government records. These exceptions cover the SSNs of public employees and officials, *see TEX. GOV'T CODE* §552.117(a)(1); peace officers, *see id.* §§552.117(a)(2), 552.1175; Texas Department of Criminal Justice employees and other law enforcement personnel, *see id.* §§552.117(a)(3)-(5), 552.1175; crime victims who seek compensation from the state, *see id.* §552.132(b)(1); employees, volunteers, and clients of a family violence shelter center or sexual assault program, *see id.* §552.138; and individuals who apply for a marriage license, *see id.* §552.141.

As these examples demonstrate, where a Texas governmental body or other entity obtains an individual's SSN, the Legislature has repeatedly acted to prohibit disclosure of the SSN to the public. Because of this pervasive federal and state legislative scheme

that safeguards SSNs' confidentiality and use, Texans have a legitimate expectation that their SSNs will be kept confidential.

However, despite the public's legitimate expectation that their SSNs will be kept confidential, at the time of section 552.147's enactment there were still circumstances in which SSNs maintained by a governmental body were not made confidential by statute. *See Tex. Att'y Gen. Op. No. GA-0203* (2004) at 2-3. Within those gaps in confidentiality, where no specific federal or state statute prohibited the disclosure of SSNs, a government body would be required to release SSNs under the PIA. *See Tex. Att'y Gen. ORD-622* (1994) at 2-4.³

In sum, statutes protecting SSNs at the time of section 552.147(a)'s enactment were pervasive, yet not all-encompassing. We therefore conclude that a review of the existing statutory provisions addressing the disclosure of SSNs indicates that the purpose of section 552.147(a) was to make all SSNs confidential under the PIA, closing the gaps in SSN confidentiality under the PIA.

3. Circumstances Surrounding Section 552.147(a)'s Enactment

A survey of the privacy landscape of SSNs in Texas today can also shed light on whether section 552.147(a) makes SSNs confidential. People today need and expect their SSNs to be safeguarded by the government and other entities that maintain this information. *See In re Crawford*, 194 F.3d 954, 957-58 (9th Cir. 1999). An individual's SSN--particularly when combined with other identifying information such as a birth date--is a key that can unlock the door to an entire world of otherwise confidential information. "[A]rmed with one's SSN, an unscrupulous individual could obtain a person's welfare benefits or Social Security benefits, order new checks at a new address on that person's checking account, obtain credit cards, or even obtain the person's paycheck." *Greidinger v. Davis*, 988 F. 2d 1344, 1353 (4th Cir. 1993) (citing Elizabeth Neuffer, *Victims Urge Crackdown on Identity Theft*, BOSTON

³ This is because the Texas Supreme Court in 1976 found no common-law right to privacy in SSNs. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686 (Tex. 1976). It appears that the Texas Supreme Court in *Industrial Foundation* relied on the factual conclusion that a SSN is among information "which does not itself reveal private facts." *Id.* at 686. Due to the modern-day heightened risk of identity theft and fraud, which we discuss immediately following, we believe that, given the opportunity to consider confidentiality of SSNs anew, the Texas Supreme Court would now overrule *Industrial Foundation* to the extent it holds that there is no constitutional or common-law right to privacy in SSNs.

Clerk Responsibilities

GLOBE, July 9, 1991, at 13, 20). Indeed, it is universally agreed that SSNs are at the heart of identity theft and fraud, and in today's Internet world where information--including public government information--can be instantly and anonymously obtained by anyone with access to the worldwide web, the danger is even greater.⁴

Identity theft, without question, is becoming one of the fastest growing criminal offenses in the twenty-first century. The Federal Trade Commission estimates that in a five-year period prior to early 2003 in the United States alone, there were 27.3 million reported cases of identity theft. (Thomas Fedorek, *Computers + Connectivity = New Opportunities for Criminals and Dilemmas for Investigators*, 76-Feb. N.Y. St. B.J. 10, 15 [February, 2004]). The ensuing fraud caused damages in the billions ...

Daly v. Metro. Life Ins. Co., 782 N.Y.S.2d 530, 535 (N.Y. Sup. Ct. 2004) (denying defendant's motion for summary judgment in negligence action against insurer who disclosed consumers' names, SSNs, and date of birth information). Several courts have recognized the potential for identity theft and financial harm from the uncontrolled release of SSNs. See, e.g., *Sherman v. United States Dep't of the Army*, 244 F.3d 357, 364-66 (5th Cir. 2001); *In re Crawford*, 194 F.3d at 958; *Greidinger*, 988 F. 2d at 1353-54; *Arakawa v. Sakata*, 133 F. Supp. 2d 1223, 1228-29 (D. Haw. 2001); *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 640 N.E.2d 164, 168-69 (Ohio 1994). "[T]he harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous." *Greidinger*, 988 F.2d at 1354. The disclosure of a person's SSN can undoubtedly lead to identity theft. In short, there is a high potential for harm from the uncontrolled release of SSNs to a member of the public.

⁴ See SOCIAL SECURITY ADMINISTRATION, IDENTITY THEFT AND YOUR SOCIAL SECURITY NUMBER (Jan. 2006) (last visited Feb. 13, 2007) (Publication No. 05-10064) (Social Security Administration website discussing identity theft and SSNs, available at <http://www.ssa.gov/pubs/10064.html>); FEDERAL TRADE COMMISSION, MINIMIZING YOUR RISK (last visited Feb. 13, 2007) (Federal Trade Commission website concerning minimizing risk of identity theft, available at http://www.consumer.gov/idtheft/con_minimize.htm); UNITED STATES DEPARTMENT OF JUSTICE, IDENTITY THEFT AND FRAUD (last visited Feb. 13, 2007) (United States Department of Justice website concerning identity theft and identity fraud, available at <http://www.usdoj.gov/criminal/fraud/idtheft.html>).

Furthermore, the degree of need for public access to SSNs under the PIA is not significant. In many cases, a SSN only incidentally appears in requested information and in virtually all cases is of no legitimate interest to a requestor. Although government records are replete with SSNs, they actually reveal little about an individual other than serving as one of various ways to verify an individual's identity. When a requestor needs to distinguish among persons who share the same name, other information such as an address or birth date can fulfill that need without the attendant possibility of serious harm that could result from the disclosure of the SSN. Furthermore, the common and accepted practice for an entity with a legitimate need for an individual's SSN for identification purposes, such as a government agency providing benefits or a financial or credit institution providing services, is to obtain the SSN directly from its holder and not from a government record. In other words, those with a legitimate need for an individual's SSN generally have an alternative source for obtaining it.

It is also noteworthy that, on balance, the PIA's public policy and statutory mandate of open government is not advanced in any significant way when a living person's SSN is released to the public. The PIA's primary purpose is to make available to the public "complete information about the affairs of [Texas] government and the official acts of public officials and employees." TEX. GOV'T CODE §552.001(a). The reason stated in the PIA for the public's right to government information is "so that [the people] may retain control over the instruments they have created" because "[u]nder the fundamental philosophy of the American constitutional form of representative government . . . government is the servant and not the master of the people." *Id.* Redacting SSNs from responsive records requested under the PIA will not detract from the PIA's purpose of making publicly available information about the affairs of government and the official acts of public officials and employees because the release of SSNs does not serve the purpose of openness in government in any foreseeably significant way. While SSNs reveal nothing about the processes of government and little of significance, if anything, about the individual who holds it, a SSN would allow an unscrupulous requestor to discover an individual's personal and financial information, which is irrelevant to the operations of government, and increase the possibility of financial harm to the individual through the fraudulent use of the SSN. See *Beacon Journal Publ'g Co.*, 640 N.E.2d at 168-69.

Given the presence at the time of section 552.147(a)'s enactment of these privacy considerations--the high potential for harm from the uncontrolled release of a SSN associated with a living

person's name, the irrelevance of such a release to the principle of open government, and the limited public interest, if any, in disclosure of an individual's SSN under the PIA--we find that the proper construction of section 552.147(a) is that SSNs are made confidential under the PIA.

4. Consequences of Our Construction of Section 552.147(a)

We also consider the consequences of particular constructions of section 552.147(a). Construing SSNs to be confidential under the PIA affords them significant protection under the PIA. The distribution of confidential information under the PIA constitutes official misconduct and a criminal misdemeanor punishable by a fine of up to \$ 1,000, confinement in the county jail for up to six months, or both. *See TEX. GOV'T CODE §552.352*. Any alternative construction of section 552.147(a) could allow a governmental body to disclose SSNs without penalty. In addition, construing SSNs to be confidential under the PIA results in equal treatment for all individuals' SSNs maintained by a governmental body. If section 552.147(a) does not make SSNs confidential, then some individuals' SSNs are protected while other individuals' SSNs are not. If the Texas Legislature has seen fit to protect SSNs of convicted sex offenders, *see, e.g., TEX. CODE CRIM. PROC. ANN. art. 62.005(b)(1)*, surely the Legislature intended for regular law-abiding citizens to be entitled to the same protection.

5. Administrative Construction of Section 552.147(a)

The Office of the Attorney General, through its Open Records Division, is the administrative agency charged with interpreting the PIA. *See TEX. GOV'T CODE §552.306*. Since section 552.147's effective date of June 17, 2005, the Open Records Division has issued more than 4,000 informal open records rulings that treat SSNs as confidential under section 552.147 of the PIA. *See, e.g., Tex. Att'y Gen. OR2006-5291*.⁵ Thus, the administrative construction of section 552.147(a) supports a finding that section 552.147(a) makes SSNs of living persons confidential.

After considering section 552.147(a)'s legislative history, existing common law and statutory framework, surrounding circumstances, potential consequences, and administrative construction, we find that

⁵ The handful of open records rulings that have permitted disclosure of SSNs did not conclude that SSNs are not confidential under section 552.147 but rather concluded that another statute both made the information public and prevailed over section 552.147. *See, e.g., Tex. Att'y Gen. OR2005-9250*, at 4. In Section II, *infra*, we reconsider the reasoning of these open records rulings.

552.147(a) makes confidential under the PIA the SSN of a living person. Therefore, the PIA makes mandatory that a governmental body not release the SSN of a living person to a member of the public under the PIA, unless the requestor is the holder of the SSN or the holder's authorized representative.⁶

B. Construction of Section 552.147(b)

Section 552.147(b) does not affect our determination that section 552.147(a) makes SSNs confidential. Subsection (b) deals with the process for redacting SSNs of living persons, stating that the redaction of SSNs under subsection (a) may be performed "without the necessity of requesting a decision from the attorney general." *See TEX. GOV'T CODE §552.147(b)*.

Generally, under the PIA, a governmental body may not withhold public information on the grounds that it is excepted from disclosure without first seeking a decision from the attorney general. *See id. §552.301(a)*. When information submitted to the attorney general contains both excepted and non-excepted information, this office generally directs the governmental body to provide copies of the public information to the requestor with the excepted information redacted from the copies. *See Tex. Att'y Gen. ORD-606 (1992)* at 2-3 (determining that a governmental body must redact from a photocopy rather than retype the document). But generally a governmental body may not respond to a request for public information under the PIA with redacted copies without first seeking an attorney general decision, unless the requestor assents to the redaction. *See Tex. Att'y Gen. ORD-682 (2005)* at 5 n.5. A governmental body that seeks an attorney general decision under the PIA must raise and explain the applicability of a claimed exception and submit to this office within the statutory deadline certain information necessary for this office to render a decision. *See TEX. GOV'T CODE §552.301(e)*.

Subsection (b) provides that governmental bodies are not required to comply with these procedures for requested SSNs. The subsection pertains solely to the administrative procedure for processing requests for records that contain SSNs of living persons. Thus, when the SSN of a living person appears with information to be made public under the PIA, section 552.147(a) requires that the governmental body redact the SSN, and section 552.147(b) permits the governmental body to do so without following the standard administrative procedure of first requesting an

⁶ We note that, under section 552.023 of the PIA, a governmental body cannot deny a person or a person's authorized representative access to the person's own SSN. *See TEX. GOV'T CODE §552.023*.

Clerk Responsibilities

attorney general decision. And as a result, governmental bodies can produce public information more promptly.

II. Application of Section 552.147 to All County Clerk Records

We are next asked whether section 552.147's provision for redaction of SSNs applies to all county clerk records. Request Letter, *supra* note 1, at 1, 3.

The general statutory rule for county clerk records is that “[a]ll records belonging to the office of the County Clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times.” *TEX. LOC. GOV'T CODE §191.006* (emphasis added). Section 552.147 restricts access to the SSNs in the clerk's records that are subject to the PIA. *See TEX. GOV'T CODE §552.147(a)*. Thus, as a general rule, SSNs of living persons in all county clerk records subject to the PIA are confidential and protected from disclosure under section 552.147.

There are also specific county clerk records expressly made public by statute. *See, e.g., TEX. PROP. CODE §13.002* (real property records). Regarding laws that are specific to a record and that make the record public, this office has determined that, “[a]s a general rule, exceptions to required public disclosure provided in the [PIA] are inapplicable to information that statutes other than the [PIA] expressly make public.” *Tex. Att’y Gen. ORD-623* (1994) at 3. This determination is based on the rule of statutory construction that, where statutes conflict, the specific statutory provision prevails as an exception to the general provision. *See TEX. GOV'T CODE §311.026(b)*. In the case of SSNs within a record expressly made public, the same rule of statutory construction leads to the opposite result. While the statutes making county clerk records public refer to entire documents, section 552.147 refers only to one piece of information within those documents. And thus section 552.147 prevails as the more specific statute. As a result, to comply with both laws, the County Clerk must redact SSNs from the copies of records made available to the public. We also note that this conclusion does not conflict with the presumption in construing a statute that public interest is favored over any private interest. *See id.* §311.021(5). While openness of records is in the public interest, the same public has a legitimate interest in the privacy of their SSNs.⁷

One possible exception to this interpretation is *section 11.008 of the Texas Property Code*, which not only makes deeds and deeds of trust available to the public but also claims to be the exclusive state law governing the confidentiality of such documents. *See TEX. PROP. CODE §11.008(f)-(g)*. We do not need to address the conflict between this statute and section 552.147, however, because we conclude that SSNs in these documents are confidential under the federal Social Security Act. The Social Security Act makes SSNs confidential if they are “obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990.” *42 U.S.C.A. §405(c)(2)(C)(viii)(I)*. Section 11.008, which was enacted in 2003, authorizes the obtaining of SSNs in a deed or deed of trust. *See Act of May 27, 2003, 78th Leg., R.S., ch. 715, §1, 2003 Tex. Gen. Laws 2141, 2142, and Act of May 28, 2003, 78th Leg., R.S., ch. 960, §1, 2003 Tex. Gen. Laws 2836, 2836 (codified at TEX. PROP. CODE §11.008(b))*. Therefore, SSNs obtained or maintained pursuant to section 11.008 are confidential under the Social Security Act. *See Mills v. Warner Lambert Co., 157 S.W.3d 424, 426-27 (Tex. 2005)* (state law preempted to the extent it actually conflicts with federal law).

We thus conclude that SSNs of living persons in all county clerk records subject to the PIA are confidential and protected from disclosure under section 552.147(a).

III. SSNs in Original Documents in the County Clerk's Office

We are also asked whether section 552.147 authorizes a county clerk to permanently redact a SSN from the original filed document. Request Letter, *supra* note 1, at 1, 3. It has been suggested that it would be more efficient for the County Clerk's office to redact SSNs from original documents as they are filed rather than prior to each public disclosure. *Id.* at 3. However, section 552.147 authorizes redaction of a SSN only from “information the governmental body discloses under [the PIA].” *TEX. GOV'T CODE §552.147(b)*. The plain language of the statute does not authorize a county clerk to redact a SSN from an original record. *See id.* Furthermore, redacting a SSN from an original record would contradict a person's special right of access to his own SSN under the PIA. *See id.* §552.023(a). Finally, a clerk's alteration of an original document offered for filing would likely violate the clerk's statutory duties outside of the PIA. *See, e.g., TEX. LOC. GOV'T CODE §191.001(c)* (requiring a

⁷ Previously, this office has determined that the confidentiality of section 552.147(a) does not apply in three situations in which other law specific to the record at issue makes it public: county property records, *see, e.g., TEX. LOC. GOV'T CODE § 118.024(a)*; peace officer accident

reports, *see TEX. TRANSP. CODE § 550.065(c)(4)*; and arrest warrants and affidavits, *see TEX. CODE CRIM. PROC. ANN. art. 15.26*. Future open records opinions will reflect the analysis contained here.

county clerk to “record, exactly . . . the contents of each instrument that is filed for recording and that the clerk is authorized to record”); *TEX. PROP. CODE §11.004(a)(1)* (stating clerk’s duty to “correctly record” deed and deed of trust instruments). Therefore, the County Clerk may not permanently redact a SSN from an original, filed document.

IV. Redaction of SSNs in Certified Copies

We answer the next two questions together. It is asked whether a clerk may issue a certified copy of a document when the SSNs have been redacted from the copy and, if so, whether the “certification stamp” must “include a disclaimer that the document has been altered (i.e., that a [SSN] has been redacted).” Request Letter, *supra* note 1, at 1, 3-4. A county clerk has a general duty to give an “attested copy of any instrument that is recorded in the clerk’s office.” *TEX. LOC. GOV’T CODE §191.004(a)*. Neither “attested copy” nor “certified copy” is defined in the statutes. A certified copy is commonly understood to be “a copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted.” *See Tex. Attorney Gen. v. Litten*, 999 S.W.2d 74, 78 n.7 (Tex. App.--Houston [14th Dist.] 1999, no pet.) (quoting BLACK’S LAW DICTIONARY 287 (4th ed. 1968)). We find no law that prevents the clerk from providing a copy that accurately certifies the document’s content as well as the fact that SSNs have been redacted according to law. *Cf. Irving v. State*, 436 S.W.2d 537, 539 (Tex. Crim. App. 1969) (holding that it was not error to admit into evidence certified copy of judgment containing typewritten entry reflecting that the original had been signed by the presiding judge). Therefore, a county clerk may issue a certified copy of a document when the SSNs have been redacted from the copy. Because a certified copy attests that the copy is an exact reproduction of the original document, we further find that the certification must disclose the fact that SSNs have been redacted.

V. Redaction of SSNs from County Clerk Records on the Internet

We are also asked whether section 552.147 “or any other law” requires the redaction of all SSNs from the County Clerk’s records prior to making them available on the Internet. Request Letter, *supra* note 1, at 1, 4. The question essentially asks about the redaction of SSNs from records prior to their voluntary disclosure. As we have noted earlier, Section 552.007(a) of the PIA specifically addresses--and limits--the voluntary disclosure of information to the public. *See TEX. GOV’T CODE §552.007(a)*. It provides that a governmental body may voluntarily make public its information “unless the disclosure is expressly prohibited by law or the information is

confidential under law.” *Id.* By its plain language, the statute prohibits a governmental body from voluntarily disclosing confidential information. Therefore, a governmental body must redact SSNs of living persons from records prior to making those records available on the Internet.

VI. Determining Whether a SSN is of a Living Person

Section 552.147 only applies to the SSN of “a living person.” *Id.* §552.147. We are asked how a governmental body may determine whether a SSN belongs to a living person. *See* Request Letter, *supra* note 1, at 2. Section 552.147 does not specify how a governmental body is to make that determination. *See TEX. GOV’T CODE §552.147*. This office imposes no burden on a governmental body to affirmatively demonstrate that a person whose SSN is requested under the PIA is living. In fact, this office will raise section 552.147 for a governmental body when a record contains a person’s SSN. *See* Tex. Att’y Gen. ORD-481 (1987). This office presumes the person whose SSN is at issue is living unless the facts before us show otherwise. While following our approach to privacy questions in applying section 552.147 does not ensure that a SSN at issue belongs to a living person, we believe it would be unduly burdensome on this office and on governmental bodies to require an affirmative showing of the fact that a person is living when the exception is silent on the subject. Thus for purposes of section 552.147, we find that a governmental body may presume the person whose SSN is at issue is living unless the facts before the governmental body show otherwise.

SUMMARY

The social security number (“SSN”) of a living person is confidential and subject to mandatory exception from required disclosure under section 552.147(a) of the Public Information Act (“PIA”). Distributing confidential information under the PIA is a criminal offense. Section 552.147(b) of the PIA provides an administrative procedure by which a governmental body may redact confidential SSNs from public information without first obtaining an attorney general decision.

The confidentiality of SSNs of living persons under 552.147 of the PIA applies to all county clerk records subject to the PIA.

Section 552.147 of the PIA does not authorize a county clerk to redact SSNs from original documents maintained in the clerk’s records.

When a county clerk redacts a SSN from a copy of a document maintained by the clerk’s office, the

Clerk Responsibilities

clerk may label the copy as a “certified copy,” but such certification must reflect that SSNs have been redacted.

Prior to posting a record on the Internet, the clerk must redact the SSNs of living persons from any record subject to the PIA.

For purposes of section 552.147 of the PIA, a governmental body may presume that a requested SSN belongs to a living person unless the facts before the governmental body show otherwise.

Appendix E. Conditional Filing

Printed on bright paper & attached to front of pleading.

CONDITIONALLY FILED
CAUSE # _____ AMOUNT OWED\$ _____
REASON: _____
Citation Needed: <input type="checkbox"/> Yes <input type="checkbox"/> No
This is to be removed from file when PAID

CONDITIONALLY FILED
CAUSE # _____ AMOUNT OWED\$ _____
REASON: _____
Citation Needed: <input type="checkbox"/> Yes <input type="checkbox"/> No
This is to be removed from file when PAID

CONDITIONALLY FILED
CAUSE # _____ AMOUNT OWED\$ _____
REASON: _____
Citation Needed: <input type="checkbox"/> Yes <input type="checkbox"/> No
This is to be removed from file when PAID

Clerk Responsibilities

Appendix F. Texas Attorney General Opinion No. JC-0292 (2000).

October 11, 2000

Re.: Whether the \$ 1 fee that a county clerk charges to issue “a noncertified copy of a page or part of a page of a document,” *TEX. LOC. GOV'T CODE* §§118.011(a)(4), .0145(a), includes the cost of locating requested information that is no more than fifty pages long, and related question (RQ-0249-JC)

Request by:

The Honorable Tim Curry
Tarrant County Criminal District Attorney
Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

Opinion by:

JOHN CORNYN, Attorney General of Texas; ANDY TAYLOR, First Assistant Attorney General; CLARK KENT ERVIN, Deputy Attorney General - General Counsel; SUSAN D. GUSKY, Chair, Opinion Committee; Kymberly K. Oltrogge, Assistant Attorney General - Opinion Committee

OPINION:

Sections 118.011 and 118.0145 of the Local Government Code, which specially regulate the noncourt fees that a county clerk may or must collect, require a county clerk to collect \$ 1 “for issuing a noncertified copy of each page or part of a page of a document.” *TEX. LOC. GOV'T CODE* §§118.011(a)(4), .0145(a). Section 118.011 additionally allows a clerk to charge a reasonable fee for “performing other duties prescribed or authorized by statute” if no other fee is prescribed. *Id.* §118.011(c). Under *section 552.261 of the Government Code*, one of the Public Information Act’s cost provisions, a governmental body may charge only photocopying costs in response to a request for public information, if the request is for fifty or fewer pages of paper records that are located in one building and that are not located in “a remote storage facility.” *TEX. GOV'T CODE* §552.261(a). You raise the issue whether, when a county clerk receives a request for noncertified copies of fifty or fewer pages of public information that is located in one building (not a remote storage facility), the clerk may charge under section 118.011(c) a reasonable fee for labor costs.¹ The clerk may not. The clerk may charge only \$ 1 per

¹ Letter from Honorable Tim Curry, Tarrant County Criminal District Attorney, to Honorable John Cornyn, Attorney General (June 13, 2000) (on file with Opinion Committee) [hereinafter Request Letter].

page or part of a page, as section 118.011(a)(4) dictates for noncertified copies. *See TEX. LOC. GOV'T CODE* §118.011(a)(4).

You specifically ask: “Which statute takes precedence in the case of searches within one building’s records (where the building is not a remote storage facility) which result in production of less than fifty pages of public information: *Government Code* §552.261(a), . . . or *Local Government Code* §118.011(c)?” *See* Request Letter, *supra* note 1, at 1-2. Your question appears to mistakenly assume that the \$ 1 fee required by section 118.011(a)(4) for issuing noncertified copies does not include labor costs that may be incurred in providing the noncertified copies.

As you ask only about a request for fewer than fifty pages of public information, all of which is located in one building or in physically connected buildings (not a remote storage facility), we limit our answer to such a request. We further understand you to ask only about the costs that may be charged for paper copies.

Section 118.011 of the Local Government Code sets a county clerk’s noncourt fees. Subsection (a)(4) requires a county clerk to “collect . . . for services rendered to any person” \$ 1 “for each page or part of a page” of noncertified papers. *TEX. LOC. GOV'T CODE* §118.011(a)(4). The subsection also expressly refers to section 118.0145 of the same code, which indicates what the noncertified-paper fee is for: “The fee for ‘Noncertified Papers’ under Section 118.011 is for issuing a noncertified copy of each page or part of a page of a document.” *Id.* §118.0145(a). Subsection (c) of section 118.011 provides the catch-all upon which your question relies: “The clerk shall charge reasonable fees for performing other duties prescribed or authorized by statute for which a fee is not prescribed by this subchapter.” *Id.* §118.011(c).

Your question juxtaposes section 118.011 with a cost provision of the Public Information Act, *section 552.261 of the Government Code*. Section 552.261 precludes a governmental body from charging for materials, labor, or overhead associated with fulfilling a request for public information if

- the request is for fifty or fewer pages;
- the documents are located in one building or in physically connected buildings; and
- the documents are not located in a remote storage facility.

See TEX. GOV'T CODE §552.261(a); *see also id.* §552.261(c) (describing physical connection between buildings).

A prior opinion of this office, Letter Opinion 96-082, notes a conflict between *section 118.011(a)(4) of the Local Government Code* and the Public Information Act’s cost provisions. *See* Tex. Att’y Gen. LO-96-082, at 2. *Section 552.265 of the Government*

Code, at the time the letter opinion was issued, provided that “the charge for a copy made in a district or county clerk’s office may not be more than the actual cost of copies, as provided by Sections 552.261 and 552.262, unless a certified record . . . is requested.” See *TEX. GOV’T CODE* §552.265, amended by Act of June 1, 1997, 75th Leg., R.S., ch. 1231, §4, sec. 552.265, 1997 Tex. Gen. Laws 4697, 4699. The letter opinion states that section 552.265 “directly conflicts with the one-dollar fee mandated by section 118.011(a)(4)” of the *Local Government Code*. Tex. Att’y Gen. LO-96-082, at 2. Because section 118.011(a)(4) was enacted after section 552.265, the opinion concludes, “section 118.011 prevails over section 552.265, to the extent the latter statute applies to county clerks.” *Id.* The language in section 552.265 at issue in Letter Opinion 96-082 is substantially similar to *section 552.261 of the Government Code*, which we are addressing here.

Consistently with Attorney General Letter Opinion 96-082, we conclude that, at least with respect to a request to a county clerk for noncertified copies of fifty or fewer pages of paper records that are located in one nonremote building or in nonremote physically connected buildings, *section 118.011(a)(4) of the Local Government Code* prevails over *section 552.261(a) of the Government Code*.

When two statutes conflict, a special provision “prevails as an exception to the general provision” unless the legislature adopted the general provision later and manifestly intended the general provision to prevail. See *TEX. GOV’T CODE* §311.026. The legislature amended *section 552.261(a) of the Government Code* to add the cost provisions relating to fifty or fewer copies in 1995. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §16, sec. 552.261, 1995 Tex. Gen. Laws 5127, 5136. The legislature added the noncertified papers cost provision to *section 118.011 of the Local Government Code* in 1993. See Act of May 26, 1993, 73d Leg., R.S., ch. 554, §1, 1993 Tex. Gen. Laws 2061, 2061. Thus, *section 552.261(a) of the Government Code* is the later-enacted provision.

But we conclude that section 118.011 prevails as an exception to the Public Information Act’s more general cost provisions. Section 118.011 pertains specifically to a county clerk’s records and therefore creates an exception to section 552.261(a) absent a contrary legislative intent. And nothing in the 1995 act amending *section 552.261 of the Government Code* indicates that the Public Information Act’s cost provisions should prevail over cost provisions that are county-clerk specific. Indeed, as it was introduced, the 1995 bill that amended section 552.261 also proposed to amend *section 118.0145 of the Local Government Code* so that the *Local Government Code* explicitly would provide that the Public Information Act’s cost

provisions prevail over the County Clerk’s cost provisions in *section 118.011 of the Local Government Code*:

(b) To the extent that the amount of the fee conflicts with the amount determined under *Section 552.265, Government Code*, the amount determined under that section controls.

Tex. H.B. 1718, 74th Leg., R.S. (1995). The House Committee on State Affairs deleted the amendment. See HOUSE COMM. ON STATE AFFAIRS, Bill Analysis, Tex. H.B. 1718, 74th Leg., R.S. (1995). While we cannot say that this deletion indicates a legislative intent that *section 118.011 of the Local Government Code* would prevail over *section 552.261 of the Government Code*, we believe it counters any suggestion that the legislature manifestly intended the 1995 amendments to section 552.261 to supersede *section 118.011 of the Local Government Code*.

Moreover, the \$ 1 fee provided for noncertified copies in section 118.011(a)(4) includes all costs associated with locating and producing the copies. *Section 118.0145 of the Local Government Code* states that the \$ 1 fee “is for *issuing* a noncertified document.” *TEX. LOC. GOV’T CODE* §118.0145(a); see also *id.* §118.011(a)(4). Thus, we must define “issuing” to properly construe section 118.0145.

This office’s past definitions of the verb “issue” and its derivatives do not resolve whether, in this instance, the term includes all costs associated with locating and producing a noncertified document. Attorney General Opinion H-552, for example, states that, for the purposes of the statute establishing costs county clerks were to charge for “issuing” certified documents, the term “means something more than merely providing a copy.” Tex. Att’y Gen. Op. No. H-552 (1975) at 3. Rather, with respect to certified documents, the term means a document that the clerk “sends out officially as authoritative or binding.” See *id.* at 4. Letter Opinion 96-082, relying upon the “common definition of the term,” states that “when a clerk issues a copy of a document,” he or she will copy or obtain a copy of an original and deliver that copy “to the person who requested and paid for it.” Tex. Att’y Gen. LO-96-082, at 3. Thus, “the fee prescribed [by statute] for issuing copies of documents includes making the copies.” *Id.* You do not ask about costs of making copies, though; you ask about costs preliminary to copying, such as locating requested documents.

Rather, we define the term “issue” consistently with common usage to encompass clerical preparation, such as finding the document to be copied. See *id.* When construing the words and phrases that make up a statute, we apply their common usages, unless the legislature has directed otherwise. See *TEX. GOV’T*

Clerk Responsibilities

CODE §311.011 (directing construer to read word or phrase in context and according to rules of grammar and common usage unless word or phrase is term of art). The verb “issue” encompasses “to . . . be sent forth officially or publicly; to be published or emitted,” as well as “to give things out to (a person); to supply (a person) with.” VIII OXFORD ENGLISH DICTIONARY 137 (2d ed. 1989). Various cases state that, with respect to the issuance of an execution of judgment, “issuance” encompasses not only delivery of the writ of execution to an officer who will enforce it but also the writ’s “clerical preparation.” *Carpenter v. Probst*, 247 S.W.2d 460, 461 (Tex. Civ. App.-San Antonio 1952, writ ref’d); *Walker-Smith Co. v. Coker*, 176 S.W.2d 1002, 1010 (Tex. Civ. App.-Eastland 1943, writ ref’d w.o.m.); *Cotten v. Stanford*, 147 S.W.2d 930, 933 (Tex. Civ. App.-Amarillo 1941, no writ); see also *Delta County Levee Improvement Dist. No. 2 v. Leonard*, 516 S.W.2d 911, 913 (Tex. 1974), cert. denied, 423 U.S. 829 (1975) (stating that, “in allowing execution under the circumstances presented in this case, no violence is done to the definition of ‘issuance’ as contemplated by prior decisions”) (citing *Carpenter*). Thus, the \$ 1 fee set in section 118.011(a)(4) is the total charge that a county clerk may levy for each noncertified page or part of a page requested for paper copies. Cf. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 931 F. Supp. 474, 483 (S.D. Tex. 1996) (stating that fifteen cents per page is “reasonable copy cost”).

Similarly, section 118.011(c) of the *Local Government Code* does not encompass labor costs associated with locating documents sought in a request for no more than fifty noncertified paper copies, where the documents are located in one nonremote building or in physically connected buildings. Section 118.011(c) requires a county clerk to “charge reasonable fees for performing other duties prescribed or authorized by statute for which a fee is not prescribed by this subchapter.” *Permian Report v. Lacy* suggests that this language, together with section 118.024 of the *Local Government Code*, which permits a person to copy documents in a county clerk’s office “without paying any charge,” precludes a clerk of court from requiring a party who wishes to copy documents to reimburse the clerk “for the cost of a supervisor who will control the reproduction procedure.” *Permian Report v. Lacy*, 817 S.W.2d 175, 177-78 (Tex. App.-El Paso 1991, writ denied). Moreover, the phrase “duties prescribed or authorized by statute,” used in section 118.011(c), denotes sovereign functions the legislature has delegated to a county clerk that are either mandatory or discretionary. The phrase does not include administrative or clerical functions that are necessary to perform the services for which section 118.011(a) enumerates a specific fee.

SUMMARY

With respect to a request for fifty or fewer copies of public information located in one nonremote building or in nonremote, physically connected buildings, a county clerk must collect a fee of \$ 1 to issue each page or part of a page of requested, noncertified copies. See *TEX. LOC. GOV’T CODE §118.011(a)(4)*. This \$ 1 fee includes all labor costs associated with locating the original documents, and a county clerk may not charge an additional fee under section 118.011(c) of the *Local Government Code* for locating the original documents. Section 118.011(a)(4) of the *Local Government Code* prevails over section 552.261 of the *Government Code* to the extent the two cost provisions are inconsistent.

Appendix G. Travis County Clerk Civil, Probate, & Mental Health Fees, effective 1/1/2014

The Travis County fees may not be the fees for your county; always check the authorizing statute. As noted on page 4 of the paper, some fees are set by the commissioners court in each county as authorized by statute, and other fees may apply to only some counties.

Abbreviation references:

Civ P & R = Texas Civil Practice and Remedies Code

EC = Texas Estates Code

Gov Code = Texas Government Code

H & S = Texas Health and Safety Code

LGC = Texas Local Government Code

TRCP = Texas Rules of Civil Procedure

County Clerk Probate Fees**Application for Probate of Will and Issuance of Letters Testamentary**

Constable, Pct. 5, Posted Citation	\$75.00	Ch 118.131, LGC + EC §51.053
Judiciary Fund	40.00	Ch 51.704, Gov Code
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
	\$ 304.00	

Application for Probate of Will as Muniment of Title

Constable, Pct. 5, Posted Citation	\$ 75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
	\$ 304.00	

Clerk Responsibilities

Application for Appointment of Independent/Dependent Administrator with Will Annexed

Constable, Pct. 5, Posted Citation	\$ 75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
	\$ 304.00	

Application for Appointment of Administrator (or Temporary Administrator)

Attorney Ad Litem Fee Deposit	\$ 450.00	EC §53.104 + Admin Order 31,274
Constable, Pct. 5, Posted Citation	75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	\$ 756.00	

Probate of copy of will or codicil or

Probate of will more than four years after testator's death.

NOTE: For any application to probate a copy of a lost will or codicil, or to probate a lost will or codicil without a copy, or to probate a will more than four years after the testator's death, an attorney ad litem deposit of \$450.00 is added to the filing fee. EC §258.002 or EC §258.051 + Administrative Order.

Small Estate Affidavit		
Constable, Pct. 5, Posted Citation	\$ 75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A)(iii), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	\$ 276.00	

Application for Appointment of Independent/Dependent Administrator and Determination of Heirship		
Attorney Ad Litem Fee Deposit	\$450.00	EC §202.009 + Admin Order 31,274
Constable, Pct. 5, Posted Citation	75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	8.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	\$ 760.00	

Application for Determination of Heirship (does not include personal service of citation)		
Attorney Ad Litem Fee Deposit	\$ 450.00	EC §202.009 + Admin Order 31,274
Constable, Pct. 5, Posted Citation	75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	8.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	\$ 760.00	

Clerk Responsibilities

Probate or Civil Adverse Action (does not include posted notice or personal citation)

Clerk's Fee – New Suit	\$ 40.00	Ch 118.052(2)(C), LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
	\$ 110.00	

Service of Citation, per party (attorney specifies)

if Constable 5:	\$ 75.00	Ch 118.052(3)(F) & 118.063, LGC
+ issuance of citation, notice, or other issuing document	4.00	Ch 118.052(3)(A) & 118.059, LGC

Application for Appointment of Guardian (or Temporary Guardian)

(the only personal citation included is citation on proposed ward; see previous page for additional service)

Attorney Ad Litem Fee Deposit	\$450.00	EC §1054.001 + Admin Order 31,274
Personal citation on proposed Ward	75.00	Ch 118.052(3)(F) & 118.063, LGC
Constable, Pct. 5, Posted Citation	75.00	Ch 118.131, LGC + EC §1051.102
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Court Investigator Fee	25.00	EC §§1054.102 & 1054.152 + Admin Order 31,274
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	\$ 860.00	

Testamentary Trust / Construction of Trust / Civil Actions (excluding Eminent Domain)

Clerk's Fee – New Suit	\$ 40.00	Ch 118.052(2)(A) & 118.055, LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
	\$ 225.00	

Foreign Will, Issuance of Letters Testamentary – EC Chapter 501

Constable, Pct. 5, Posted Citation	\$75.00	Ch 118.131, LGC + EC §51.053
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
	<u>\$ 304.00</u>	

Foreign Will (for recording only) – EC Chapter 501

Clerk's Fee – New Suit	\$ 40.00	Ch 118.052(2)(A), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
	<u>\$ 225.00</u>	

**Application for Sale of Minor's Property by a Parent without Guardianship
– EC Chapter 1351**

Attorney Ad Litem Fee Deposit	\$ 450.00	EC §53.104 + Admin Order 31,274
Constable, Pct. 5, Posted Citation	75.00	Ch 118.131, LGC + EC §1051.102
Clerk's Fee – New Suit	40.00	Ch 118.052(2)(A) & 118.055, LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
Probate Judge Signature Fee	2.00	Ch 118.101, LGC
	<u>\$ 756.00</u>	

Clerk Responsibilities

Payment of Claims without Guardianship– EC Chapter 1355		
Clerk's Fee – New Suit	\$ 40.00	Ch 118.052(2)(A) & 118.055, LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Alt. Dispute Resolution Fee	15.00	Ch 152.004, Civ P & R
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
	\$ 210.00	

County Clerk Mental Health Fees

Court Appointed Attorney Fee	\$ 100.00	Ch 574.003 & Ch 571.017, H & S
Hearing Notice, Constable (proposed patient)	75.00	Ch 574.006, H & S + 118.131 LGC
Mental Health Application	40.00	Ch 118.052(2)(A)(v), LGC
Judiciary Fund	40.00	Ch 51.704, Gov Code
Law Library Fee	35.00	Ch 323.023, LGC
Special Master Fee	25.00	Ch 574.025(c) & Ch 571.017, H & S
Supp. Court-Initiated Guardianship Fee	20.00	Ch 118.052(2)(E), LGC
Electronic Filing Fee	20.00	Ch 51.851 Gov Code
Court Reporter Fee	15.00	Ch 51.601, Gov Code
Construction Fee	15.00	Ch 51.709 Gov Code
Basic Civil Legal Services for Indigents	10.00	Ch 133.153, LGC
Records Management & Preservation Fee	5.00	Ch 118.052(3)(G), LGC
Judge's Training Fee	5.00	Ch 118.064, LGC
Appellate Judicial System Fee	5.00	Ch 22.2041, Gov Code
Issuance of Citation, Notice, etc.	4.00	Ch 118.052(3)(A) & 118.059, LGC
In-County Case	\$ 414.00	
Out of County / County Atty Fee	25.00	Ch 574.031(k), H & S
Out of County Case	\$ 439.00	

Miscellaneous

Administration of Oath	2.00	Ch 118.101, LGC
Approving and Recording Bond	3.00	Ch 118.052, LGC
Allowed Claim	4.00	Ch 118.101, LGC
Unallowed Claim	2.00	Ch 118.101, LGC
Letters Testamentary, Letters of Administration, Letters of Independent Administration	2.00	Ch 118.052, LGC
Letters of Guardianship, Letters of Temporary Administration	2.00, plus the costs of cert. copies	Ch 118.052, LGC
Exemplified Letters	4.00	Ch 118.052, LGC
Exemplified / Authenticated copies (per page)	1.00	Ch 118.052, LGC
Exemplification (per document)	7.00	Ch 118.052, LGC
Order Admitting Will to Probate and Granting Letters Testamentary or Letters of Administration	4.00	Ch 118.101, LGC

continued on next page

<i>Miscellaneous, continued</i>		
Order Admitting Will to Probate as Muniment of Title	2.00	Ch 118.101, LGC
Order Appointing Guardian and Granting Letters of Guardianship	4.00	Ch 118.052, LGC
Order of Sale of Property	2.00	Ch 118.052, LGC
Decree Confirming Sale	2.00	Ch 118.101, LGC
Decree of Partition and Distribution	2.00	Ch 118.101, LGC
Order Removing Executor, Administrator, or Guardian	2.00	Ch 118.101, LGC
Order Approving Inventory	2.00	Ch 118.101, LGC
Fiat or Certificate	2.00	Ch 118.101, LGC
Filing annual report in existing guardianship	10.00	Ch 118.052(2)(B)(vi)
Court Investigator Fee	25.00	EC §§1054.102 & 1054.152 + Admin Order 31,274
Filing annual or final account of estate	25.00	Ch 118.052(2)(B)(iv), LGC
Filing application for sale of real or personal property	25.00	Ch 118.052(2)(B)(v), LGC
Jury Fee, Civil	22.00	Ch 101.1011, Gov Code (for non-statutory probate courts, 51.604 & 101.0811)
Jury Fee, Probate	5.00	Rule 544, TRCP
Filing an inventory and appraisalment	25.00	Ch 118.052 LGC LGC 118.056(d): "The fee for filing an inventory and appraisalment under Section 118.052(2)(B)(i) applies only if the instrument is filed after the 90th day after the date the personal representative has qualified to serve or, if the court grants an extension . . . after the date of the extended deadline specified by the court."
Answer or Response	No charge	
Fee for Deposit of a Will with County Clerk during Testator's Lifetime (EC Chpt 252)	5.00	Ch. 101.081(20), Gov Code Ch 101.121(18), Gov Code
Copies (per page)	1.00	Ch 118.052(3)(C) & 118.0605, LGC
Self-service copies (per page)	.20	Ch 118.011(c), LGC
Certified Copies (per page), plus Certification (per document)	1.00 5.00	Ch 118.052(3)(B) & 118.060, LGC Ch 118.052(3)(B) & 118.060, LGC
Records search, automated system	No charge	
Records search, microfilm, per name per decade	10.00	Ch 118.011(c), LGC

Appendix H. Unsworn Declaration

Civil Practice and Remedies Code Section 132.001(c)

1. Must be in writing
2. Must include a jurat in substantially the following form:

“My name is _____(first)_____(middle)_____(last)_____, my date of birth is _____, and my address is _____(street)_____(city) _____(state) _____(zip code), and I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, _____.

Declarant”

Appendix I. Letters or Certificate for Temporary Administrators or Guardians

Sample Letters of Temporary Administration

LETTER OF TEMPORARY ADMINISTRATION

ESTATE OF **(DECEDENT'S NAME)** * **C-1-PB-13-000001**
 DECEASED * **IN PROBATE COURT**
 * **NUMBER ONE**
 * **TRAVIS COUNTY, TEXAS**

THE STATE OF TEXAS
COUNTY OF TRAVIS

I, DANA DEBEAUVOIR, Clerk of the Probate Court Number One of Travis County, Texas, do hereby certify that on the **(date of appointment)** **(REPRESENTATIVE'S NAME)** was duly appointed by said Court, **TEMPORARY ADMINISTRATOR** of the Estate of **(DECEDENT'S NAME)**, Deceased, and granted certain specific powers as set forth in the attached copy of the order of appointment.

I further certify that said **(REPRESENTATIVE'S NAME)** qualified as such **Temporary Administrator** on the **(Date of oath or bond, whichever is latest)**, by filing the bond as required by said order of appointment and taking the oath of office, and that said appointment is still in full force and effect. Said appointment as **Temporary Administrator** of Decedent's Estate to serve as such until discharged by order of this court, made permanent or closed.

Given under my hand and seal of office at Austin, Texas, on **August 14, 2013**.

Dana DeBeauvoir
 County Clerk, Travis County, Texas
 P.O. Box 149325, Austin, Texas 78714-9325

By Deputy: _____
 CLERK'S NAME

Sample Certificate for a Temporary Guardianship

NO. C-1-PB-___ - _____

IN THE GUARDIANSHIP OF	§	IN COUNTY PROBATE
	§	
	§	NO. 1
	§	
AN INCAPACITATED PERSON	§	TRAVIS COUNTY, TEXAS

CERTIFICATE OF COMPLIANCE WITH OATH AND BOND REQUIREMENTS

On the _____ day of _____, 20____, _____, Temporary Guardian of the Person (and Estate) of _____, complied with the Oath and Bond requirements set forth by the Order Appointing Temporary Guardian of the Person (and Estate), issued by the Travis County Probate Court No. 1 on _____.

DANA DEBEAUVOIR
County Clerk, Travis County Texas
P.O. Box 1748, Austin, Texas 78767

By Deputy: _____

Appendix J. Miscellaneous required reports

AW11-2
 Prescribed by Secretary of State
 Section 16.001, Texas Election Code
 3/07

Cause No.: C-1-PB-12-000248

ABSTRACT FOR APPLICATION FOR PROBATE ACTION

I, the undersigned, being the Clerk of the Court having probate jurisdiction for Travis County, do hereby certify that the following person was of legal voting age and a resident of this State at the time of his /her death. An application for probate of will or administration of the decedent's estate, an application for determination of heirship, or application of no administration due to small estate was filed in the court.

Name of Decedent: **MARIE WITTE CORY AKA MARIE W CORY**

Date of Birth: N/A Sex: **FEMALE**

Date of Application: **February 13, 2012**

Social Security Number (if available): **UNKNOWN**

Supplemental identification: **DECEDENT DIED ON SEPTEMBER 13, 2011 IN MIDLAND COUNTY, TEXAS AT THE AGE OF 88 YEARS.**

Signature of County Clerk

Dana DeBeauvoir
 County Clerk, Travis County, Texas
 P.O. Box 149325, Austin, Texas 78714-9325

By Deputy:

D. MENDEZ

Date **February 14, 2012**

36P - 04570
 C-1-PB-12-000248



Cause No. C-1-PB-_____ - _____

In the Estate / Guardianship of

§
§
§
§
§
§

In the Probate Court No. 1

_____,

of

- Incapacitated Person**
- Deceased**
- Minor**

Travis County, Texas

Order Recording Authorization of Court-Appointee Fees

On this day the Court orders the recording of fees to _____, court-appointee in this cause, for payment of fees approved by the Court on _____ and associated with services performed as:

<u>Position to which appointed</u>	<u>Types of Fees</u>	<u>Relationship to Ward or Deceased</u>
<input type="checkbox"/> Attorney ad Litem	<input type="checkbox"/> 5% Statutory Fee for Administrator	<input type="checkbox"/> Family member
<input type="checkbox"/> Guardian ad Litem	<input type="checkbox"/> 5% Statutory Fee for Executor	<input type="checkbox"/> Friend
<input type="checkbox"/> Administrator	<input type="checkbox"/> 5% Statutory Fee for Guardian	<input type="checkbox"/> Attorney
<input type="checkbox"/> Guardian	<input type="checkbox"/> 5% Statutory Fee for Trustee	<input type="checkbox"/> Public Guardianship Program
<input type="checkbox"/> Receiver	<input type="checkbox"/> Unreasonably low, additional compensation	<input type="checkbox"/> Private Professional Guardian
<input type="checkbox"/> Mediator	<input type="checkbox"/> Attorneys fees for serving as an attorney or guardian ad litem	<input type="checkbox"/> Trustee
<input type="checkbox"/> Case Manager	<input type="checkbox"/> Attorneys fees for serving <i>as attorney</i> when also serving as court appointee	<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Interpreter	<input type="checkbox"/> Case-management fees	
<input type="checkbox"/> Physician	<input type="checkbox"/> Other (specify) _____	
<input type="checkbox"/> Court Investigator		
<input type="checkbox"/> Visitor		
<input type="checkbox"/> Other (specify) _____		

The above-referenced appointment was made by Judge Guy Herman and was appropriate and necessary.

IT IS THEREFORE ORDERED that the authorization of fees in the amount of \$_____ be paid from/by _____ and be recorded in compliance with Texas Supreme Court Order Number 07-9188.

Signed on _____, 2013.

Guy Herman, Presiding Judge

**ABSTRACT FOR FINAL JUDGMENT OF
MENTAL INCAPACITATION (ART. 6687B, SEC. 30)**

I, the undersigned, being the clerk of the county or probate court of Travis County, do hereby certify that the following person is of legal voting age and a resident within this state. I do hereby certify that he/she has been adjudged mentally incapacitated (Art. 6687b, Sec. 30) in Probate Court, docket number **C-1-PB-12-000058** on **03/08/2012**

Name of Person: **MARIA FLORES**

Permanent resident address: **20826 MORGANS CHOICE LN PFLUGERVILLE, TX**

78660 Birthdate: **03/23/1951** Age: **60** Sex: **FEMALE**

(Social Security Number if available): **UNKNOWN**

Supplemental Information: **ON 03/08/2012 IN THE PROBATE COURT OF TRAVIS COUNTY, TEXAS, JUDGE GUY HERMAN SIGNED AN ORDER THAT THE WARD WILL NO LONGER HAVE THE RIGHT TO: VOTE IN A PUBLIC ELECTION; OWN, POSSESS, OR PURCHASE A FIREARM; OR HOLD OR OBTAIN A LICENSE TO OPERATE A MOTOR VEHICLE UNDER CHAPTER 521 OF THE TEXAS TRANSPORTATION CODE.**

ISSUED this **March 08, 2012.**

Dana DeBeauvoir
County Clerk, Travis County, Texas
P.O. BOX 149325 AUSTIN, TEXAS 78714-9325

By Deputy:

O. RUIZ

Not later than the 10th day each month, the clerk of each county or probate court in the state shall furnish to the registrar of voters of the county of residence of the person so adjudged, an abstract of each final judgment adjudging the person over the minimum voting age and resident within this State to be mentally incapacitated.

C-1-PB-12-000058
39P - 00410



NOTICE OF CONVICTIONS

CONVICTION – BOND FORFEITURE – MENTALLY INCAPACITATED – EDUCATION PROGRAM

(PRINT OR TYPE)

NAME (LAST) (FIRST) (MIDDLE) (SSN)

DRIVER LICENSE NO., ID NO. (indicate State if other than Texas) BIRTHDATE RACE SEX

ADDRESS CITY, TEXAS (Zip Code)

MISDEMEANOR FELONY BOND FORFEITURE

OFFENSE (Type and/or description of offense)

OFFENSE DATE CONVICTION DATE PENALTY Ignition Interlock Required

OFFENSE COMMITTED IN COMMERCIAL VEHICLE YES NO UNKNOWN TRANSPORTING HAZARDOUS MATERIAL YES NO UNKNOWN

DRIVER LICENSE OR OPERATING PRIVILEGE SUSPENDED

BEGINNING DATE ENDING DATE

NOTE: Court must indicate beginning and ending date of suspension on driving while intoxicated/alcohol and involuntary manslaughter. All other offenses leave suspension dates blank.

DRUG EDUCATION PROGRAM

Drug Education Program Successfully Completed Date

DWI EDUCATION PROGRAMS

DWI Probation Granted Education program required Date DWI Education Program for repeat offender, required Date

DWI Education Program Successfully completed Date DWI Program for repeat offenders successfully completed Date

DWI Education Program waived Date DWI Education Program for repeat offenders, waived Date

GRANTED DWI EDUCATION PROGRAM EXTENSION

Date extended from to

CERTIFIED BY SIGNATURE TITLE

COURT COUNTY

CAUSE/DOCKET #

Appendix L. Form the Guardianship Programs Should have Filed with the Clerk in January



Guardianship Certification Board
 Guardianship Programs
 January 1 through December 31, 2013

Guardianship Programs Reporting Form

1. Name of Program	2. Name of person completing this form	3. Title	4. Phone
Texas Government Code § 111.044(a) and Rule X(g) of the Rules Governing Guardianship Certification Not later than January 31 of each year, each guardianship program must provide to the Board the following information for the preceding year: 1) the total number of wards served by the guardianship program, reported by county in which the application to create a guardianship was filed; 2) the name, business address and business telephone number of each individual employed by or volunteering or contracting with the guardianship program to provide guardianship services on behalf of a ward or proposed ward of the program; 3) the total amount of money received from the State of Texas for the provision of guardianship services; and 4) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, identified by source, and the total amount of money received from those public sources. Texas Estates Code § 1104.257 [formerly Probate Code § 697A(a)] Not later than January 31 of each year, each guardianship program operating in a county shall submit to the county clerk a copy of this report...			

Please provide the following information:

5. Employee, Volunteer or Contractor (Check)	6. Name	7. Business Address (Street, City, State, ZIP)	8. Business Phone	9. County(ies) in which employee, volunteer or contractor provides or is authorized to provide guardianship services
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				
<input type="checkbox"/> Emp				
<input type="checkbox"/> Vol				
<input type="checkbox"/> Con				

10 → County in Which Application to Create Guardianship Was Filed	11 → Number of Wards	Public Funding	
			Amount
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
○○○○○	○○○○○		○ ○ ○ ○ ○
12 → Total Number of Wards		14 → Other Public Funds Source	Amount
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		○ ○ ○ ○ ○	○ ○ ○ ○ ○
		15 → Total Other Public Funds	Amount
			○ ○ ○ ○ ○

Please return this form no later than January 31, 2014 to: → Lesley Martin Ondrechen
 → (E-mail submissions are preferred.) → Director, Guardianship Certification Program
 → Office of Court Administration
 → by e-mail: lesley.ondrechen@txcourts.gov or by mail: P.O. Box 12066
 → → Austin, TX 78711-2066

Appendix M. Court's Request for Criminal History Report from Guardianship Certification Board/Program

TEXAS GUARDIANSHIP CERTIFICATION BOARD

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • AUSTIN, TEXAS 78701
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066
512/463-1625 • FAX 512/463-1648

CHAIR
JUDGE GLADYS BURWELL, Galveston
VICE CHAIR
LEAH COHEN, Austin

PROGRAM DIRECTOR
LESLEY MARTIN ONDRECHEN

**Court's Request for Criminal History Report
Obtained by the Guardianship Certification Board
from the Texas Department of Public Safety or the Federal Bureau of Investigation**

Pursuant to Texas Government Code Section 411.1386(a-6) and Texas Probate Code Section 698(a-6) (as amended effective June 19, 2009), I hereby request a copy of the criminal history report obtained by the Guardianship Certification Board on the following individual:

Full Name: _____ Certification Number _____ OR
 Provisional Certification Number _____

Court: : _____ Case Number: _____

TxDPS Report FBI Report Both

As set forth in Texas Government Code Section 411.1386 and Probate Code Section 698, I understand that the criminal history record information obtained:

- is for the exclusive use of the court;
- may be used by the court only in determining whether to appoint, remove or continue the appointment of a private professional guardian, a guardianship program or the Department of Aging and Disability Services or to appoint any other person proposed to serve as a guardian, including a temporary or successor guardian, other than the ward's or proposed ward's family member or attorney;
- is privileged and confidential;
- may not be released or disclosed to any person or agency except on court order or consent of the individual who is the subject of the report; and
- may be destroyed by the clerk after the information is used for its authorized purpose.

Judge, [court and county]

Printed Name: _____
Date: _____

[Deputy] Clerk, _____ County

Printed Name: _____
Date: _____

Criminal history information will be sent to the county clerk for the court requesting it at the official address on file at the Office of Court Administration.

Appendix N. Texas Electronic-Filing

<http://www.courts.state.tx.us/jcit/Efiling/EfilingHome.asp>

(The Supreme Court Mandate for Electronic Filing can be found with the materials for the e-filing presentation.)



Electronic Filing

Judicial Committee on Information Technology



JCIT is working with OCA to educate the filing community about the eFileTexas.gov system and the upcoming statewide eFiling mandate. The new system substantially lowers the cost of eFiling to the filers and has the capacity to support the Supreme Court's mandate.

General Information	
Supreme Court Mandate for Electronic Filing (Amended) OCA Agreement with Tyler Technologies for eFiling Amendment #1 Amendment #2 Issues Governance Overview Current Issues - Filers (Coming Soon) Current Issues - EFSP Current Issues - Clerks	
For Filers	For Court Clerks
eFileTexas.gov EFSPs	Mandatory eFiling Deadline by County eFileTexas.gov Infrastructure Guidelines Financial Set Up for Courts How to return a filing for correction \$2 Transaction Fee Certification Form [PDF] [MSWord]
For Electronic Filing Service Providers (EFSPs)	
EFSP Service Agreement EFSP Certification Use Cases Pre-Certification Checklist	

MANDATORY E-FILING: SCHEDULE OF ROLLOUT

E-filing became mandatory in the Supreme Court of Texas and in civil cases in the Courts of Appeal effective January 1, 2014

COURTS IN COUNTIES WITH POPULATION OF 500,000 OR MORE: JANUARY 1, 2014 *	COURTS IN COUNTIES WITH A POPULATION OF 200,000 TO 499,999: JULY 1, 2014 *	COURTS IN COUNTIES WITH A POPULATION OF 100,000 TO 199,999: JANUARY 1, 2015 *	
Bexar Collin Dallas Denton El Paso Fort Bend Harris Hidalgo Tarrant Travis	Bell Brazoria Cameron Galveston Jefferson Lubbock McLennan Montgomery Nueces Smith Webb Williamson	Brazos Comal Ector Ellis Grayson Gregg Guadalupe Hays Johnson	Kaufman Midland Parker Potter Randall Starr Taylor Tom Green Wichita

COURTS IN COUNTIES WITH A POPULATION OF 50,000 TO 99,999: JULY 1, 2015 *				
Anderson Angelina Bastrop Bowie Cherokee	Coryell Hardin Harrison Henderson Hood	Hunt Liberty Maverick Nacogdoches	Orange Rockwall Rusk San Patricio	Van Zandt Victoria Walker Wise

COURTS IN COUNTIES WITH A POPULATION OF 20,000 TO 49,999: JANUARY 1, 2016 *				
Aransas Atascosa Austin Bandera Bee Brown Burnet Caldwell Calhoun Cass Chambers Colorado	Cooke Dewitt Erath Fannin Fayette Gillespie Gray Grimes Hale Hill Hockley	Hopkins Houston Howard Hutchinson Jasper Jim Wells Jones Kendall Kerr Kleberg Lamar	Limestone Matagorda Medina Milam Moore Navarro Palo Pinto Panola Polk San Jacinto Shelby	Titus Tyler Upshur Uvalde Val Verde Waller Washington Wharton Willacy Wilson Wood

* A Court may petition for an extension with good cause shown.

MANDATORY E-FILING: SCHEDULE OF ROLLOUT, continued

COURTS IN COUNTIES WITH A POPULATION OF LESS THAN 20,000: JULY 1, 2016 *				
Andrews	Culberson	Hartley	Madison	Runnels
Archer	Dallam	Haskell	Marion	Sabine
Armstrong	Dawson	Hemphill	Martin	San Augustine
Bailey	Deaf Smith	Hudspeth	Mason	San Saba
Baylor	Delta	Irion	McCulloch	Schleicher
Blanco	Dickens	Jack	McMullen	Scurry
Borden	Dimmit	Jackson	Menard	Shackelford
Bosque	Donley	Jeff Davis	Mills	Sherman
Brewster	Duval	Jim Hogg	Mitchell	Somervell
Briscoe	Eastland	Karnes	Montague	Stephens
Brooks	Edwards	Kenedy	Morris	Sterling
Burleson	Falls	Kent	Motley	Stonewall
Callahan	Fisher	Kimble	Newton	Sutton
Camp	Floyd	King	Nolan	Swisher
Carson	Foard	Kinney	Ochiltree	Terrell
Castro	Franklin	Knox	Oldham	Terry
Childress	Freestone	La Salle	Parmer	Throckmorton
Clay	Frio	Lamb	Pecos	Trinity
Cochran	Gaines	Lampasas	Presidio	Upton
Coke	Garza	Lavaca	Rains	Ward
Coleman	Glasscock	Lee	Reagan	Wheeler
Collingsworth	Goliad	Leon	Real	Wilbarger
Comanche	Gonzales	Lipscomb	Red River	Winkler
Concho	Hall	Live Oak	Reeves	Yoakum
Cottle	Hamilton	Llano	Refugio	Young
Crane	Hansford	Loving	Roberts	Zapata
Crockett	Hardeman	Lynn	Robertson	Zavala
Crosby				

* A Court may petition for an extension with good cause shown.

OFFICE OF COURT ADMINISTRATION TEXAS JUDICIAL COUNCIL



OFFICIAL CONSTITUTIONAL COUNTY COURT MONTHLY REPORT

FOR THE MONTH OF _____, _____

COUNTY _____

COUNTY CLERK _____

MAILING ADDRESS _____

CITY _____, TEXAS _____
ZIP _____

E-MAIL _____

FAX NUMBER _____

PLEASE CHECK ALL STATEMENTS BELOW THAT APPLY:

_____ THE CONSTITUTIONAL COUNTY COURT **DOES NOT** EXERCISE CRIMINAL JURISDICTION.

_____ THE CONSTITUTIONAL COUNTY COURT **DOES NOT** EXERCISE CIVIL JURISDICTION.

_____ THE CONSTITUTIONAL COUNTY COURT **DOES NOT** EXERCISE JUVENILE JURISDICTION.

_____ THE CONSTITUTIONAL COUNTY COURT **DOES NOT** EXERCISE PROBATE & MENTAL HEALTH JURISDICTION.

PLEASE RETURN THIS FORM NO LATER THAN 20 DAYS
FOLLOWING THE END OF THE MONTH REPORTED TO:

OFFICE OF COURT ADMINISTRATION

P.O. Box 12066
AUSTIN, TEXAS 78711
512/463-1625
FAX: 512/936-2423

THE ATTACHED REPORT IS A TRUE AND ACCURATE REFLECTION OF
THE RECORDS OF THE COURTS OF THIS COUNTY.

PREPARED BY _____

DATE _____ / _____ A.C. _____ PHONE _____

OFFICE OF COURT ADMINISTRATION TEXAS JUDICIAL COUNCIL



OFFICIAL STATUTORY COUNTY COURT MONTHLY REPORT

FOR THE MONTH OF _____, _____,

COUNTY _____

COUNTY OR DISTRICT CLERK _____

MAILING ADDRESS _____

CITY _____, TEXAS _____

E-MAIL _____ ZIP _____

FAX NUMBER _____

PLEASE CHECK ALL STATEMENTS BELOW THAT APPLY:

_____ THIS IS A COMBINED REPORT FOR ALL STATUTORY COUNTY COURTS IN THE COUNTY.

_____ THIS IS A SEPARATE REPORT FOR THE _____ NAME OF COURT _____ ONLY.

_____ THE STATUTORY COUNTY COURTS IN THIS COUNTY **DO NOT** EXERCISE JUVENILE JURISDICTION.

_____ THE STATUTORY COUNTY COURTS IN THIS COUNTY **DO NOT** EXERCISE PROBATE AND MENTAL HEALTH JURISDICTION.

PLEASE RETURN THIS FORM NO LATER THAN 20 DAYS FOLLOWING THE END OF THE MONTH REPORTED TO:

OFFICE OF COURT ADMINISTRATION
P.O. Box 12066
AUSTIN, TEXAS 78711
512/463-1625
FAX: 512/936-2423

THE ATTACHED REPORT IS A TRUE AND ACCURATE REFLECTION OF THE RECORDS OF THE COURTS OF THIS COUNTY.

PREPARED BY _____

DATE _____ / _____ A.C. _____ PHONE _____

PROBATE AND GUARDIANSHIP SECTION

IF NO COURT ACTIVITY FOR THE MONTH, CHECK THIS BOX:

CASES ON DOCKET	DECEDENTS' ESTATES			GUARDIANSHIPS		ALL OTHER	TOTAL
	INDEPENDENT ADMINISTRATION	DEPENDENT ADMINISTRATION	ALL OTHER ESTATE PROCEEDINGS	MINOR	ADULT		
1. NEW CASES, APPLICATIONS OR WILL/GUARDIANSHIP CONTESTS FILED							
2. OTHER CASES ADDED							
a. Ancillary Cases							
b. All Other Matters							
3. INVENTORIES FILED							
4. GUARDIANSHIP OF PERSON REPORTS FILED							
5. ANNUAL OR FINAL ACCOUNTS FILED							

ADDITIONAL INFORMATION				TOTAL
6. GUARDIANSHIPS	TOTAL	c. Closed	d. Active	7. SEC. 683 INVESTIGATIONS
				8. CHAPT. 48 REMOVALS
a. Dismissed or Denied	TOTAL	c. Closed	d. Active	9. HEARINGS HELD
				10. CASES IN WHICH PLAINTIFF/PETITIONER REPRESENTED SELF
b. Granted				

MENTAL HEALTH SECTION

IF NO COURT ACTIVITY FOR THE MONTH, PLEASE CHECK THIS BOX:

	TEMPORARY MENTAL HEALTH SERVICES	EXTENDED MENTAL HEALTH SERVICES	MODIFICATION:		ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATIONS
			INPATIENT TO OUTPATIENT	OUTPATIENT TO INPATIENT	
1. NEW APPLICATIONS FILED					7. NEW APPLICATIONS FILED
2. ORDERS FOR PROTECTIVE CUSTODY SIGNED					
3. PROBABLE CAUSE HEARINGS HELD					
4. RELEASE/DISMISSAL PRIOR TO FINAL HEARING					8. DISMISSAL PRIOR TO HEARING
5. FINAL COMMITMENT HEARINGS HELD					9. HEARINGS HELD
6. DISPOSITION AT FINAL HEARING					10. DISPOSITION AT HEARING
a. DENIED (RELEASE)					a. DENIED
b. GRANTED (COMMIT)					b. GRANTED
<i>INPATIENT</i>					
<i>OUTPATIENT</i>					

Intake

Hearings

Other Information

**OFFICE OF COURT ADMINISTRATION
TEXAS JUDICIAL COUNCIL**



**OFFICIAL CONSTITUTIONAL COUNTY COURT
MONTHLY REPORT INSTRUCTIONS**

INDEX TO INSTRUCTIONS

LEGAL REQUIREMENTS 1

GENERAL INSTRUCTIONS..... 1

CRIMINAL SECTION

 Definition of Criminal Cases.....2

 Criminal Case Type Categories.....2

 Cases on Docket.....3

 Dispositions.....8

 Supplemental Information.....10

 Additional Court Activity.....10

 Request for Finding of Hate Crime12

CIVIL SECTION

 Definition of Civil Cases.....13

 Civil Case Type Categories.....13

 Cases on Docket.....13

 Dispositions.....18

 Additional Court Activity.....20

JUVENILE SECTION

 Definition of Juvenile Cases.....21

 Juvenile Case Type Categories.....21

 Cases on Docket.....22

 Adjudications28

 Dispositions.....30

 Additional Court Activity.....32

PROBATE AND GUARDIANSHIP SECTION

 Definition of Probate and Guardianship Cases34

 Probate and Guardianship Case Type Categories.....34

 Cases on Docket.....35

 Additional Information.....37

MENTAL HEALTH SECTION

 Mental Health Cases39

**OFFICE OF COURT ADMINISTRATION
P O Box 12066
Austin, Texas 78711-2066
512/463-1625
512/936-2423 (fax)**

**OFFICE OF COURT ADMINISTRATION
TEXAS JUDICIAL COUNCIL**



**OFFICIAL STATUTORY COUNTY COURT
MONTHLY REPORT INSTRUCTIONS**

INDEX TO INSTRUCTIONS

LEGAL REQUIREMENTS	1
GENERAL INSTRUCTIONS	1
CRIMINAL SECTION	
<i>Misdemeanors</i>	
Definition of Criminal Cases	2
Criminal Case Type Categories	2
Cases on Docket	3
Dispositions	8
Supplemental Information	10
<i>Felonies</i>	
Definition of Criminal Cases	11
Criminal Case Type Categories	11
Cases on Docket	12
Dispositions	16
Supplemental Information	19
<i>Additional Court Activity</i>	19
<i>Request for Finding of Hate Crime</i>	22
CIVIL SECTION	
Definition of Civil Cases	23
Civil Case Type Categories	23
Cases on Docket	24
Dispositions	28
Additional Court Activity	30
FAMILY LAW SECTION	
Definition of Family Cases	31
Family Law Case Type Categories	31
Cases on Docket	32
Dispositions	38
Additional Court Activity	39
JUVENILE SECTION	
Definition of Juvenile Cases	41
Juvenile Case Type Categories	41
Cases on Docket	42
Adjudications	49
Dispositions	50
Additional Court Activity	51
PROBATE AND MENTAL HEALTH SECTION	
Probate and Guardianship Cases	55
Mental Health Cases	60

**OFFICE OF COURT ADMINISTRATION
P O Box 12066
Austin, Texas 78711-2066
512/463-1625
512/936-2423 (fax)**

PROBATE AND GUARDIANSHIP SECTION

Definition of Probate and Guardianship Cases

For the purpose of this report, the number of probate and guardianship cases reported is based on the number of proceedings filed or heard each month. **DO NOT INCLUDE** amended, corrected or supplemental pleadings.

Probate and Guardianship Case Type Categories

1. **INDEPENDENT ADMINISTRATION:** A proceeding to probate a will and for issuance of letters testamentary under Section 401.001 of the Estates Code, or an estate opened under any of the following sections:
 - Estates Code Sec. 401.002(a), where the will does not provide for an independent administration;
 - Estates Code Sec. 401.002(b), where no named independent executor is living or available to serve; or
 - Estates Code Sec. 401.003(b), where all parties agree to have an independent administration in an intestate situation.
2. **DEPENDENT ADMINISTRATION:** An estate opened under Estates Code Ch. 301. These estate cases require court monitoring. Also include applications to appoint a temporary administrator.
3. **ALL OTHER ESTATE PROCEEDINGS:** Other proceedings involving the handling or transfer of property by reason of the death of an individual.
4. **GUARDIANSHIP:** Cases involving the establishment of, or a controversy over, the relation existing between a person (guardian) lawfully invested with the power and charged with the duty of taking care of the rights of a minor or adult (ward) who is considered by the court as incapable of caring for himself/herself. Report the case under **GUARDIANSHIP—MINOR** or **GUARDIANSHIP—ADULT**, depending on the age of the proposed ward.
5. **ALL OTHER CASES:** All other cases not clearly identifiable as belonging in one of the preceding categories.

<i>Independent Administration</i>	<i>Dependent Administration</i>	<i>All Other Estate Proceedings</i>	<i>Guardianship - Minor</i>	<i>Guardianship - Adult</i>	<i>All Other Cases</i>
Probate will and issue letters testamentary (Sec. 401.001)	Appt of dependent administrator	Muniment of title (Ch. 257)	Appt guardian for person only (minor)	Appt guardian for person only (adult)	Application for mineral lease
Independent administration (Sec. 401.002(a))	Appt of dependent administrator with will annexed	Sale of minor's property without guardianship (Ch. 1351, Subchap. A)	Appt guardian for estate only (minor)	Appt guardian for estate only (adult)	Contracts of minors (Ch. 1356)
Independent administration with will annexed (Sec. 401.002(b))	Probate will, dependent executor	Payment of claims w/o administration for minor or incapacitated person (Ch. 1355)	Appt of guardian for person and estate (minor)	Appt of guardian for person and estate (adult)	Delayed birth or death certificate
Independent administration (Sec. 401.003(b))	Appt of dependent administrator with determination of heirship	Determination heirship w/o administration (Ch. 202)	Appt temp guardian for person only (minor) (Ch. 1251)	Appt temp guardian for person only (adult) (Ch. 1251)	Mortgage of minor's interest in residence homestead (Ch. 1352)
Appt of independent administrator w/ determination of heirship	Appt of temporary administrator	Small estates (Ch. 205)	Appt temp guardian for estate only (minor) (Ch. 1251)	Appt temp guardian for estate only (adult)	Receivership, minor or incapacitated (Ch. 1354)
		Complaint to produce will (Sec. 252.201)	Appt of temp guardian for person and estate (minor)	Appt of temp guardian for person and estate (adult) (Ch. 1251)	Relief from firearms disability related to guardianship case
		Probate of foreign will (Ch. 501, 502)	Appt of guardian for minor ward to receive government funds (Sec. 1151.251)	Appt of guardian for adult ward to receive government funds (Sec. 1151.251)	Trusts
		Order to examine documents or open safe deposit box (Ch. 151)	Interstate guardianship (minor) (Ch. 1253)	Interstate guardianship (adult) (Ch. 1253)	
		Emergency intervention (Ch. 152)	Management trust (minor) (Ch. 1301)	Management trust (adult) (Ch. 1301)	
			Nonresident ward (minor) (Ch. 1252)	Nonresident ward (adult) (Ch. 1252)	
			Sale of ward's property without guardianship of estate but with guardianship of person (minor) (Ch. 1351, Subchap. B)	Incapacitated spouse (Ch. 1353)	
				Sale of ward's property without guardianship of estate (adult) (Ch. 1351, Subchap. B)	

If the county court at law has jurisdiction over probate cases, a report MUST be submitted each month, whether or not any reportable activity occurred during the month.

The **PROBATE AND GUARDIANSHIP** section of the monthly report is designed to collect information on probate and guardianship case activity in the county-level courts. This section is divided into two subsections: Cases on Docket and Additional Information.

CASES ON DOCKET

NO ACTIVITY BOX

If the county court at law has probate jurisdiction but there was no reportable activity during the month, check the **"No Activity"** box, enter your name at the end of the report, and press Submit.



520020001, Andrews County, County Court: January 2011

CASES ON DOCKET	Indepe Adminis
No Activity <input checked="" type="checkbox"/>	
1. NEW CASES, APPLICATIONS OR WILL/GUARDIANSHIP CONTESTS FILED	
2. OTHER CASES ADDED	
a. Ancillary Cases	
b. All Other Matters	

Line 1. NEW CASES OR APPLICATIONS FILED

Report the number of cases in which an original petition or application was filed during the month to 1) establish a **new, separate case** or 2) to **contest a will or guardianship** in an already existing case (*see definitions below*).

NOTES:

1. *Definition of will contests:* All cases associated in any way with a will or trust, including challenges concerning the validity of the will or trust or the appointment of a personal representative (executor or administrator) and declaratory judgment actions involving a decedent's estate or a trust.
2. *Definition of guardianship contests:* All cases associated in any way with a guardianship, including challenges concerning the capacity of the proposed ward, the need for a full guardianship, the availability of a less restrictive alternative, or the qualifications of a guardian (whether of the person or estate or both) and declaratory judgment actions involving the proposed ward.
3. If any other petition, application or other matter, is filed within an already established case, do **not** count it as a new case; such cases or matters are reported in Line 2, Other Cases Added.
4. If an application for guardianship is filed as a result of **Chapter 1102** proceedings, count the application as a new case.

Line 2. OTHER CASES ADDED

a. Ancillary Cases

Report the number of cases filed involving contested matters **that bear no direct relationship to the administration of the probate estate and that would have the possibility of becoming an independently-tried lawsuit.** These cases are filed within an already existing case under a sub-case or ancillary cause number (e.g., 123456-A). Such matters may include:

- **Fiduciary breaches:** All cases challenging the activities of a fiduciary in a probate or guardianship matter. A fiduciary includes (but is not limited to) executors, administrators, trustees, guardians, agents and under powers of attorney. This would include all actions involving bonds and sureties.
- **Debt/claims cases:** All cases seeking to recover on or enforce the terms of a certain and express agreement, usually for the purpose of recovering a specific sum of money or for actions involving real property.
- **Family law matters:** All cases involving family law matters, such as divorces, child custody, or paternity actions.
- **Personal injury:** All cases for damages associated in any way with personal injury, property damage, or wrongful death and survival cases.
- **Other cases:** All other contested civil cases not clearly identifiable as belonging in one of the preceding categories.

b. All Other Matters

Report the number of other matters added to the docket **in a manner other than the filing of a new, original case. Do not include amended, corrected or supplemental pleadings.**

Include:

- applications or petitions filed within an already established case, *such as*:
 - applications filed under **Ch. 351, Subchapter B** to:
 - renew or extend any obligation owing by or to the estate;
 - purchase or exchange property;
 - accept claims or other property in payment of debts due and owing to the estate;
 - compound bad or doubtful debts due or owing to the estate;
 - compromise or settle disputed claims owed to or by the estate;
 - compromise or pay secured claims allowed and approved against the estate; or
 - abandon the administration of worthless or burdensome property;
 - applications to borrow money;
 - applications of approval of contingency fee agreement;
 - applications for sale of personal property;
 - applications for sale of real property;
 - applications to rent property;
 - applications for modification of guardianship;
 - motions for removal of personal representative/guardian;
 - applications for appointment of successor representative/guardian; and
 - applications for restoration of a ward's capacity.

- All motions filed or matters instituted after original judgment to obtain compliance with statutory requirements, including:
 - show cause motions filed by parties,
 - show cause matters instituted *sua sponte (of its own will or motion)* by the court,
 - contempt proceedings,
 - proceedings to require accountings (filed by a party or by the Court),
 - proceedings for removal of personal representatives, guardians or trustees,
 - motions to require bond, and
 - proceedings to compel distributions;
- Cases in which a motion for new trial has been granted;
- Cases transferred from another county on change of venue;
- Cases remanded from a higher court;
- Cases split by a severance order;
- Cases in which a bill of review is docketed (with a new case number);
- Cases involving similar matters that are not reported elsewhere.

Line 3. INVENTORIES FILED

For each available case category, report the number of filings of an Inventory, Appraisal and List of Claims or an Affidavit in Lieu of Inventory during the month, whether the inventory or affidavit has been approved or not. Do **not** count amended inventories.

Line 4. GUARDIANSHIP OF PERSON REPORTS FILED

Report the number of Annual Reports filed during the month by a Guardian of the Person pursuant to **Estates Code Ch. 1163, Subchapter C**, whether they have been approved or not. Do **not** count amended reports.

Line 5. ANNUAL OR FINAL ACCOUNTS FILED

For each available case category, report the number of annual or final accounts filed during the month, whether they have been approved or not.

Report annual accounts filed in:

- dependent administrations pursuant to **Estates Code Ch.359** and
- guardianships of the estate pursuant to **Estates Code Ch. 1163, Subchapter A**.

Report final accounts filed in:

- dependent administrations pursuant to **Estates Code Ch. 362** and
- guardianships of the estate pursuant to **Estates Code Ch.1204, Subchapter C**.

ADDITIONAL INFORMATION

Line 6. GUARDIANSHIPS

a. DISMISSED OR DENIED

Report the number of cases in which the application for guardianship or creation of a guardianship

management trust was denied or dismissed for any reason (i.e., non-suits, guardianship denials, dismissal for want of prosecution, etc.) during the month.

b. GRANTED

Report the number of cases in which the application for guardianship or creation of a guardianship management trust was granted during the month.

NOTE: If an application for temporary guardianship is granted during the month, then an application for permanent guardianship is also granted during the same month, the case should be reported twice. The closing of the temporary guardianship should also be reported in the **Closed** category.

c. CLOSED

Report the number of cases in which the guardianship or a guardianship management trust is closed **with a final order** during the month. Include:

- Orders closing guardianship;
- Orders closing temporary guardianship;
- Orders terminating a trust;
- Cases transferred to another jurisdiction;
- Any other final orders or judgments **completely disposing** of a guardianship case.

Do not report the guardianship cases as disposed until all matters in the case are closed.

d. ACTIVE

Report the **total** number of open, **active** cases in which an order granting guardianship has been issued. **This includes all guardianships established prior to the reporting month.**

Line 7. CHAPTER 1102 INVESTIGATIONS

Report the number of requests filed during the month for investigation into the need for a guardianship under **Estates Code Ch. 1102**, including instances where the court appoints a court investigator, court visitor, guardian ad litem, or attorney ad litem. Requests should be reported even if they were also disposed of during the same month.

Line 8. CHAPTER 48 REMOVALS

Report the number of applications filed during the month by the Texas Department of Family and Protective Services for the emergency removal of a person pursuant to Chapter 48 of the Human Resources Code, even if the applications were also disposed of during the same month.

Line 9. HEARINGS HELD

Report the number of hearings **held** during the month in decedent's estates and guardianship cases.

Do not include:

- orders signed administratively;

- matters scheduled for hearing which were cancelled or continued; or
- multiple orders signed by the judge as a result of one hearing.

Line 10. CASES IN WHICH PLAINTIFF/PETITIONER REPRESENTED SELF

Report the number of probate cases in which the plaintiff/petitioner indicated that he/she was representing himself/herself without an attorney at the time of filing of the original petition or application.

In a case with multiple plaintiffs/petitioners, report the case only if the plaintiff/petitioner who completed the Case Information Sheet filed with the original petition indicated he or she was self-represented (*pro se*).

COURT-ORDERED MENTAL HEALTH SERVICES SECTION

Section 574.014 of the Health and Safety Code requires the clerk of each court with jurisdiction to order commitment for involuntary mental health services to provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services.

If the County Court has jurisdiction over mental health cases, a report MUST be submitted each month, whether or not any reportable activity occurred during the month.

The **Mental Health** section of the monthly report is designed to collect information on mental health case activity in the county-level courts.

Mental Health Case Type Categories

The monthly report provides four categories for the reporting of applications for commitment and applications for modification. **Do not include information regarding other types of mental health services.**

1. **TEMPORARY MENTAL HEALTH SERVICES:** Applications for commitment under Health & Safety Code §574.034(a) or §574.034(b) for not longer than 90 days. **Do not** include requests for modification of existing commitment orders.
2. **EXTENDED MENTAL HEALTH SERVICES:** Applications for commitment under Health & Safety Code §574.035(a) or §574.035(b) for greater than 90 days, but not longer than 12 months. **Do not** include requests for modification of existing commitment orders.
3. **MODIFICATION: INPATIENT TO OUTPATIENT:** Under Health & Safety Code §574.061, applications for the modification of an existing order for commitment for inpatient services to provide for commitment for outpatient services.
4. **MODIFICATION: OUTPATIENT TO INPATIENT:** Under Health & Safety Code §574.065(d)(2), applications for the modification of an existing order for commitment for outpatient services to provide for commitment for inpatient services.
5. **ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATIONS:** Under Health & Safety Code §574.106 or §592.154, applications seeking an order authorizing, reauthorizing or modifying the administration of psychoactive medication.

The **MENTAL HEALTH** section is divided into three parts: Intake, Hearings and Other Information.

NO ACTIVITY BOX

If the County Court has mental health jurisdiction but there was no reportable activity during the month, check the **“No Activity”** box, enter your name at the end of the report, and press Submit.

520020001, Andrews County, County Court: January 2011

	Temporary Mental Health Services	Ex M H S
No Activity <input checked="" type="checkbox"/>		
Intake		
1. NEW APPLICATIONS FILED	<input type="text"/>	<input type="text"/>
2. ORDERS FOR PROTECTIVE CUSTODY SIGNED	<input type="text"/>	<input type="text"/>
Hearings		

Line 1. NEW APPLICATIONS FILED

Report the number of new motions for protective custody, applications for commitment orders and applications for modification orders filed during the month.

Line 2. ORDERS FOR PROTECTIVE CUSTODY SIGNED

Report the number of orders for protective custody signed pursuant to Section 574.022 of the Health and Safety Code.

Line 3. PROBABLE CAUSE HEARINGS HELD OR WAIVED

Report the number of hearings held or waived pursuant to Section 574.025 of the Health and Safety Code. Include cases in which:

- a hearing was held, whether or not the proposed patient was bound over or released;
- the proposed patient waived the probable cause hearing during an appearance; or
- the proposed patient waived the probable cause hearing in writing.

Line 4. RELEASE/DISMISSAL PRIOR TO FINAL HEARING

Report the number of applications for commitment orders and applications for modification orders that were dismissed before the final hearing was held. In these cases, no commitment order or modification order is issued.

This includes, but may not be limited to:

- the proposed patient is discharged from facility before the probable cause hearing;
- no probable cause is found for detention and the facility is ordered to release proposed patient;
- the proposed patient is released at probable cause hearing;
- the proposed patient voluntarily commits him/herself; or
- proposed patient waived probable cause hearing but was released.

Line 5. FINAL COMMITMENT HEARINGS HELD

Report the number of cases in which a final hearing for court-ordered mental health services was held pursuant to Section 574.034 of the Health and Safety Code. Include cases in which a proposed patient waived an appearance or waives the right of cross-examination at the hearing.

Line 6. DISPOSITION AT FINAL HEARING

a. DENIED (RELEASE)

Report the number of cases in which a proposed patient was released after a final hearing upon a determination that the proposed patient did not meet criteria for commitment (no commitment order or modification order was issued).

b. GRANTED (COMMIT)

Report the number of cases in which a proposed patient, after a final hearing, was ordered to receive court-ordered temporary or extended mental health services. Report information for inpatient services (pursuant to Section 574.034(a) of the Health and Safety Code) and outpatient services (pursuant to Section 574.034(b) of the Health and Safety Code) separately.

Line 7. NEW APPLICATIONS FILED

Report the number of applications for orders to authorize, reauthorize, or modify the administration of psychoactive medications filed during the month.

Line 8. DISMISSAL PRIOR TO HEARING

Report the number of applications for orders to authorize, reauthorize, or modify the administration of psychoactive medications that were dismissed before the hearing was held.

Line 9. HEARINGS HELD

Report the number of cases in which a hearing for an order to authorize, reauthorize or modify the administration of psychoactive medications was held pursuant to Section 574.106 of the Health and Safety Code. Include cases in which a proposed patient waived an appearance or waives the right of cross-examination at the hearing.

Line 10. DISPOSITION AT HEARING

a. DENIED

Report the number of cases in which the court denied the application to authorize, reauthorize or modify the administration of psychoactive medications.

b. GRANTED

Report the number of cases in which the court issued an order authorizing, reauthorizing or modifying the administration of psychoactive medications.

Office of Court Administration Texas Judicial Council



OFFICIAL DISTRICT AND COUNTY COURT APPOINTMENTS AND FEES REPORT INSTRUCTIONS

LEGAL REQUIREMENTS

Texas Supreme Court Order No. 07-9188 and Section 71.035(b) of the Texas Government Code require each district clerk and county clerk to prepare a report each month listing each fee paid during that month in the amount of \$500 or more for each appointment made by a judge of any district, county, or probate court, a court master, or court referee of a person to a position for which any type of fee may be paid in a civil case, probate case, or proceeding governed by Titles 1, 2, or 4 of the Texas Family Code.

Sections 171.1 and 171.2 of the Texas Administrative Code provide that clerks shall submit the court activity report each month to the Texas Judicial Council **no later than 20 days following the end of the month reported.**

The Official District (or County) Court Appointments and Fees Report form has been developed to enable the clerks in each county to comply with these requirements. This form is to be used to report activity for each one-month period. *A copy of the report is to be retained by the clerk for at least two years for public inspection.*

REQUIREMENTS FOR JUDGES

To enable compliance by district clerks and county clerks with the reporting requirements described above, the following is required of judges:

- each appointment is to be made by a written order;
- each approval of the payment of a fee is to be accomplished by a separate written order; and
- orders making appointments or approving the payment of fees are to be sufficiently specific to enable the clerks to prepare the required monthly reports.

GENERAL INSTRUCTIONS FOR COMPLETING THE REPORT

Please complete the appropriate blanks identifying the month and year for the data being reported, county name, district clerk or county clerk's name, and mailing address.

Each approval of the payment of a fee of \$500 or more in a **civil case, probate case, or proceeding governed by Titles 1, 2, or 4 of the Family Code** must be included in the report for the month in which it is ordered.

Notes:

*The reporting requirements **do not** apply to fees of less than \$500 in civil matters, to any fees in criminal cases, or to any fees in cases governed by Title 3 of the Family Code (delinquent conduct and conduct indicating a need for supervision).*

In a single case, multiple fees of less than \$500 which are approved separately, either over several months or within the same month, are not required to be reported even if their aggregate total is \$500 or more.

Multiple fees of less than \$500 approved for payment to an appointee for service in several different cases are not required to be reported even if their aggregate total is \$500 or more. However, they may be reported in the discretion of the trial court(s) for which this report is submitted.

Fees that must be reported include, but are not limited to:

- Attorneys fees:
 - *For serving as an appointee*
 - *For serving as attorney when serving as court appointee*
- Compensation for fiduciary services
- Eminent domain commissioner fees
- Mediator fees and
- Trustee's fees.

Do not report cases in which:

- *appointees are salaried employees of the court, such as masters, referees, etc.;*
- *appointees serve in a non-judicial capacity, such as process servers or substitute court reporters; or*
- *appointment is a result of a reservation of rights retained by a deceased person under a will such as naming an independent executor of a will or a trustee of a testamentary trust.*

Fees should be reported for the **month in which the approval order was signed** (for example, a fee for a specific amount that is approved in September, but not actually paid until October would be included in the report for September). However, if the amount of the fee is not specified in the order, the fee should be reported in the month it is paid (when the amount of the fee becomes known to the clerk).

1. If no fees of \$500 or more were approved or paid during the month, mark "No Reportable Activity This Month" on the front page of the form and submit the form to OCA.
2. For each approval of the payment of a fee of \$500 or more, the following information is required to be reported in the spaces provided:

A. NAME OF JUDGE/MASTER/REFEREE APPROVING FEE

Enter the name of the person signing the approval order.

Note: It does not have to be the same person who made the original appointment. It could, for example, be a visiting judge.

B. NAME/NUMBER OF COURT

Enter the name of the court in which the person signing the order was sitting when the order was signed (e.g., 465th District Court, County Court at Law No. 2, etc.).

C. CASE NUMBER AND STYLE OF CASE

Enter the case number and style of the case. The style may be abbreviated to include, for example, just the last names of the parties.

Note: In matters where confidentiality of records is required, judges and clerks should use their discretion regarding the style of the case.

D. NAME OF PERSON APPOINTED

Enter the name of the person appointed.

Note: If the person appointed is an attorney, his or her State Bar card number must be included.

E. POSITION TO WHICH APPOINTED

Identify the position to which the person was appointed in the case. A sample list of positions is included below for reference.

F. RELATIONSHIP TO WARD OR DECEASED

Identify whether the person appointed is:

- An attorney;
- A private professional guardian;
- Associated with a public guardianship program; or
- A friend or family member

of the ward or deceased.

If this item is not relevant to the case, select “Not applicable.”

G. DATE OF APPROVAL OF FEE

Enter the date the approval order was signed (or the date the fee was paid if the amount of the fee was not specified when the approval order was signed).

H. SOURCE OF FEES

Identify the source of the fee known to the clerk at the time this report is prepared. A sample list of sources is included below for reference.

I. AMOUNT OF FEE APPROVED

Enter the dollar amount of **each fee** approved for payment. The **entire fee amount** should be reported, not the rate approved (i.e., not \$15 per hour).

Each fee includes any and all fees occurring as a result of the appointment. It shall include attorneys' fees and related expenses resulting from the appointment and any compensation and/or fees for serving as fiduciary.

If additional reporting spaces for fees are required, this page may be reproduced and attached to the original report sheet for that month. Please number each page and indicate the total number of pages included in the report.

Sample lists of position titles and sources of fees are included below to aid you in preparing your monthly report. It should be noted that these are partial lists only—there may be additional positions to which a person may be appointed or sources of fees.

“POSITION TO WHICH APPOINTED”

“SOURCE OF FEES”

- Ad litem
- Amicus Attorney
- Attorney ad litem
- Guardian ad litem
- Administrator
- Arbitrator
- Attorney
- Commissioner
- Court Visitor
- Executor
- Friend of the Court
- Guardian
- Permanent Guardian
- Temporary Guardian
- Hearing Officer
- Interpreter
- Investigator
- Master
- Master in Chancery
- Mediator
- Personal Representative
- Physician
- Receiver
- Referee
- Social Worker
- Trustee
- Umpire

- Managing Conservator
- Possessory Conservator
- County
- Defendant
- Estate
- General Fund
- Insurance
- Named Person (*i.e., individual identified by name*)
- The Parties
- Plaintiff
- Pro Bono
- Registry of the Court
- State
- Trust
- Trustee

Please note that the **Fee Type** field in the online appointments and fees database is **OPTIONAL** when entering the report online. If uploading an XML file, the Fee Type field is required.

If you need additional categories added to the online database, please call Angela Garcia at (512) 936-1358.

OCA Online Reporting of Appointments and Fees

The Appointments and Fees database must be accessed through the Court Activity Reporting and Directory System (<http://card.txcourts.gov>).

Entering or Editing Monthly Reports

Go to <http://card.txcourts.gov>. Enter user name and password.

The user ID and password are the same ones used to enter the statistics for the monthly court activity report.

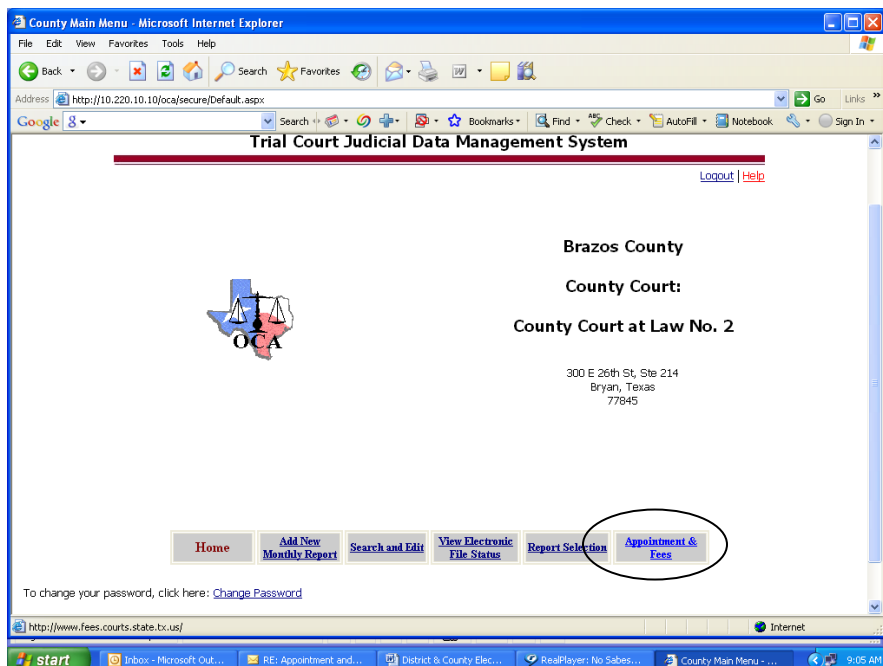
District clerks that report information for the county courts at law will need to submit one report for the district courts using the user ID associated with the district courts and one report using the user ID associated with the county-level courts.

Clerks who are submitting more than one report for the district courts in the county **or** for the county-level courts in the county do not need to enter the appointments and fees reports under each of the user IDs they are currently using to enter the statistics for the monthly court activity report. All appointments and fees records may be entered under just one user ID.

If you do not have a user ID and password for electronic reporting, please contact **Sandra Mabbett** and (512) 463-1640 or sandra.mabbett@txcourts.gov.

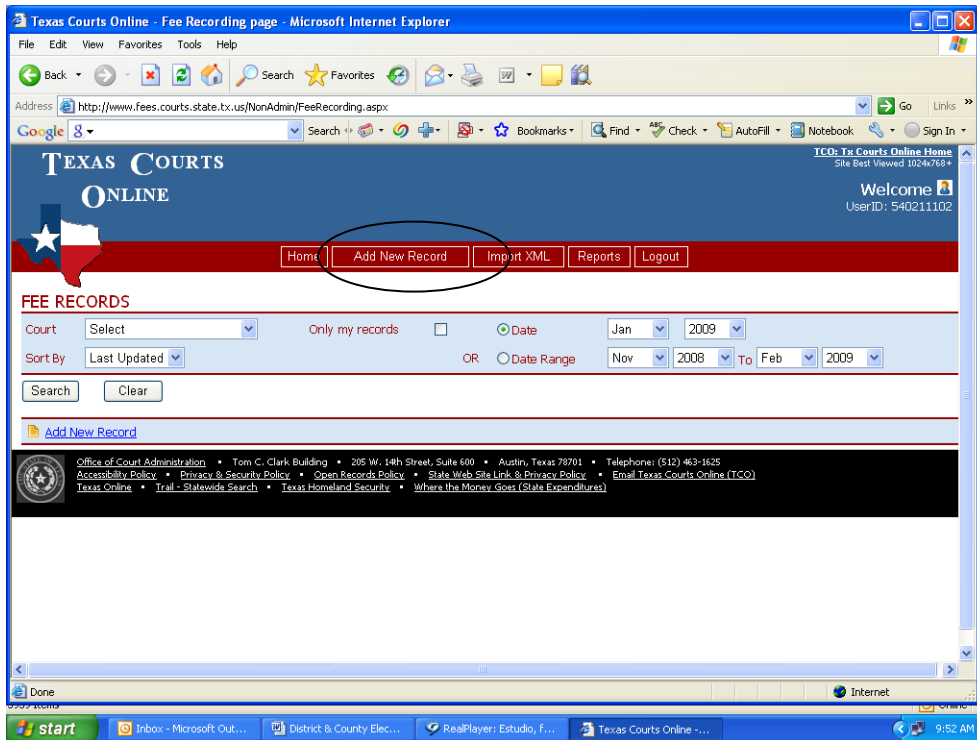
Accessing the Database

1. Select the **Appointments and Fees** button.

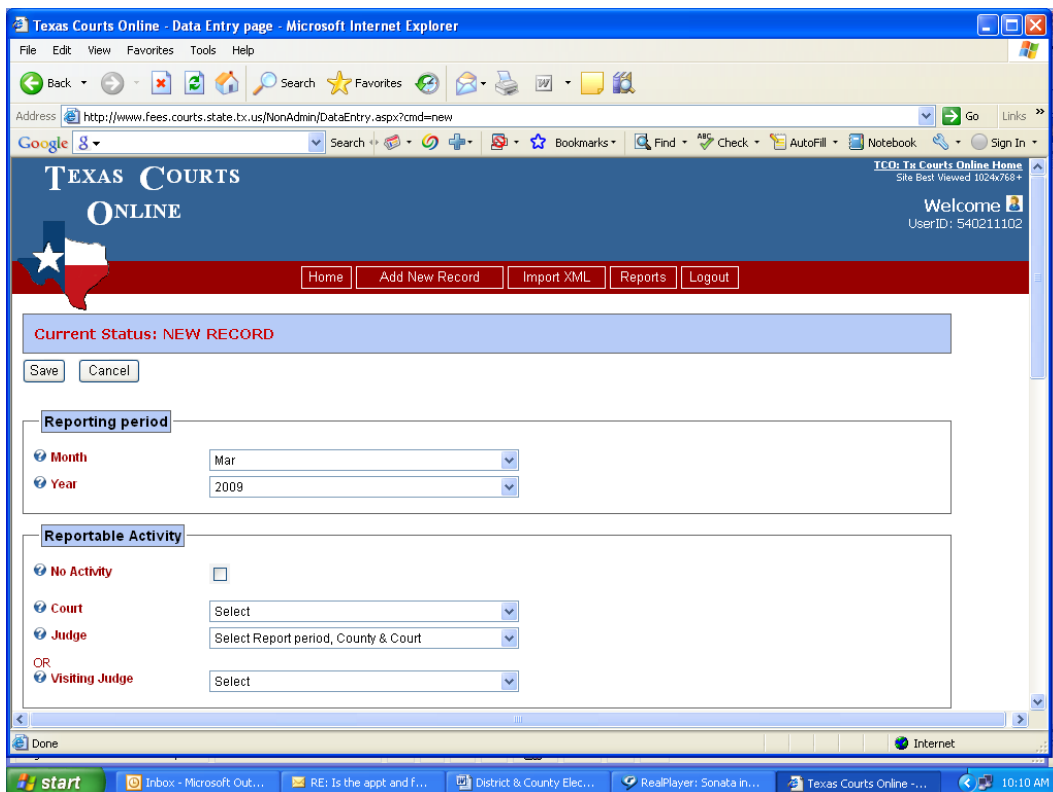


Entering Reports Manually *(go to page 6 for instructions on uploading an XML file)*

1. Select the **Add New Record** button.



2. Select the **Month** and **Year** for which you are submitting a report.




If you have no activity to report, go to page 5.

3. Enter the requested information for each fee paid over \$500. The following information is required for all entries:

- \$ **Court**
- \$ **Judge or Visiting Judge**
- \$ **Case Number**
- \$ **Case Style**
- \$ **Name of Person Appointed**
- \$ **Position to Which Appointed**
- \$ **Relationship to Ward or Deceased** (If not relevant to the case, select “Not Applicable”)
- \$ **Approval Date**
- \$ **Source of Fees, if known**
- \$ **Amount of Fee Approved**
- \$ **Prepared By**

The **Fee Type** field is optional when entering the report manually. (Note: It is required for XML imports.)

***NOTE:** See the instructions for the District and County Court Appointments and Fees report for definitions and further instructions.*

4. Press **Save** after completing each record.
5. If your next record is similar to one that you entered previously, you might save time by finding the previously entered record and selecting the copy  icon next to that record. Make any changes to the newly duplicated record, then press **Save**.
6. Log out of the system when all records have been entered.

“No Activity” Report

1. If there is **no activity** to report for the month, check the **No Activity** box.

The screenshot shows a web browser window titled "Texas Courts Online - Data Entry page - Microsoft Internet Explorer". The address bar shows the URL: <http://www.fees.courts.state.tx.us/NonAdmin/DataEntry.aspx?cmd=new>. The page header includes the "ONLINE" logo and a "Welcome" message with "UserID: 540211102". Navigation buttons include "Home", "Add New Record", "Import XML", "Reports", and "Logout".

The main content area displays the following sections:

- Current Status:** NEW RECORD
- Buttons:** Save, Cancel
- Reporting period:**
 - Month: Mar
 - Year: 2009
- Reportable Activity:**
 - No Activity:**
 - Court:** All
 - Judge:** Select Report period, County & Court
 - OR**
 - Visiting Judge:** Select
- Case Details:** (Section header, content partially obscured)

The Windows taskbar at the bottom shows the Start button and several open applications, including "Inbox - Microsoft Ou...", "RE: Is the appt and F...", "District & County Elec...", "RealPlayer: Sonata in...", and "Texas Courts Online ...". The system clock shows "10:12 AM".

2. Scroll down to the bottom of the page and enter your name in the **Prepared By** field.

Appointments and Fees Reports

Texas Courts Online - Data Entry page - Microsoft Internet Explorer

Address: <http://www.fees.courts.state.tx.us/NonAdmin/DataEntry.aspx?cmd=new>

Last Name: disabled
Suffix: disabled
Position: Select
Type: Select

Fee details
Approval Date: disabled
Fee Source: Select
Fee Type: Select
Amount Approved: \$ disabled

Miscellaneous
Prepared By: John Doe
Date Prepared: 02/11/2009

Save Cancel

Office of Court Administration • Tom C. Clark Building • 205 W. 14th Street, Suite 600 • Austin, Texas 78701 • Telephone: (512) 463-1625
Accessibility Policy • Privacy & Security Policy • Open Records Policy • State Web Site Link & Privacy Policy • Email Texas Courts Online (TCO)
Texas Online • Trail - Statewide Search • Texas Homeland Security • Where the Money Goes (State Expenditures)

3. Press **Save**. You should see a message that the record was saved successfully. If there are errors in the record that you entered, the system will prompt you to correct them.

Texas Courts Online - Data Entry page - Microsoft Internet Explorer

Address: <http://www.fees.courts.state.tx.us/NonAdmin/DataEntry.aspx?cmd=new>

TEXAS COURTS ONLINE

TCO: Tx Courts Online Home
Site Best Viewed 1024x768

Welcome
UserID: 540211102

Home Add New Record Import XML Reports Logout

Current Status: NEW RECORD

Save Cancel

Reporting period
Month: Jan
Year: 2009

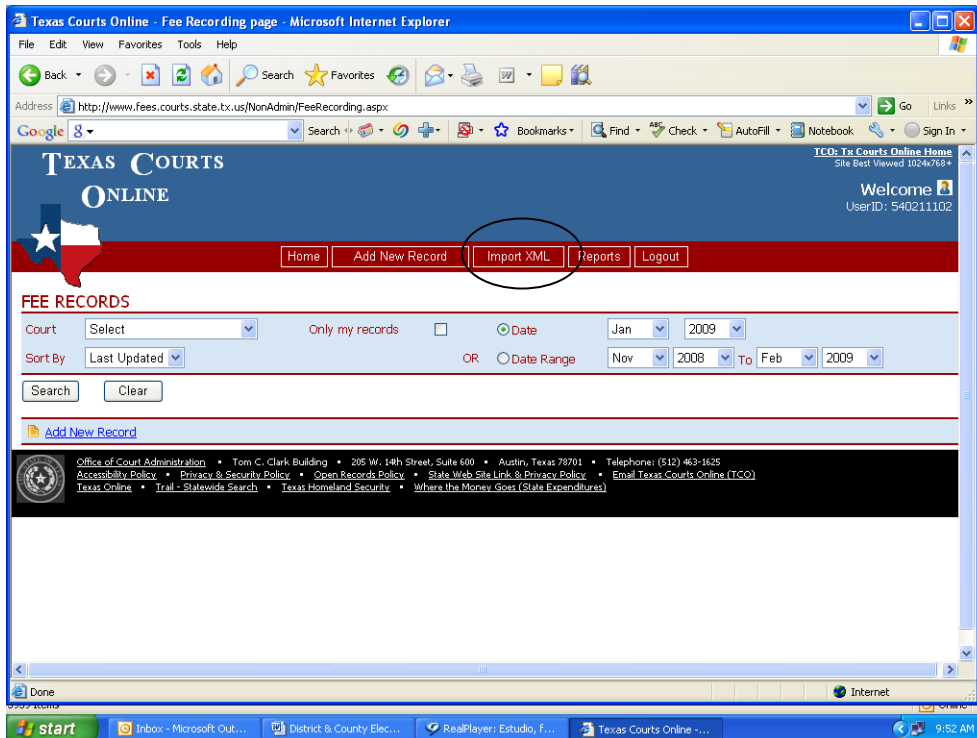
Reportable Activity
No Activity:
Court: Select
Judge: Select Report period & Court
OR
Visiting Judge: Select

Microsoft Internet Explorer
Record saved successfully. Proceeding to New record creation page
OK

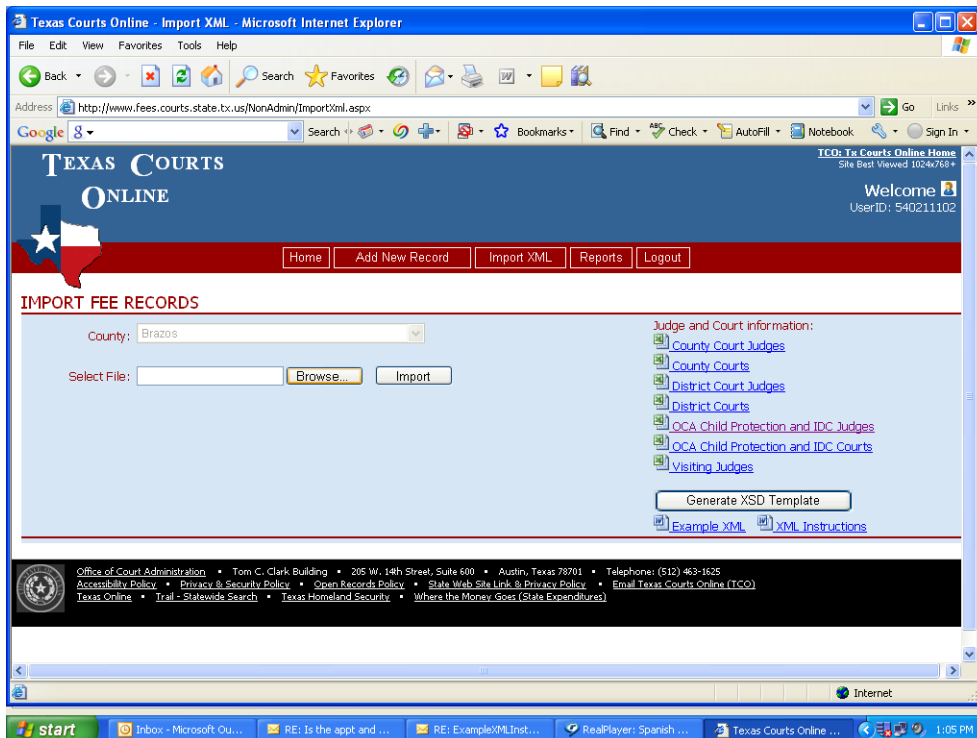
4. You may log out of the system. Your report is finished.

Uploading an XML File

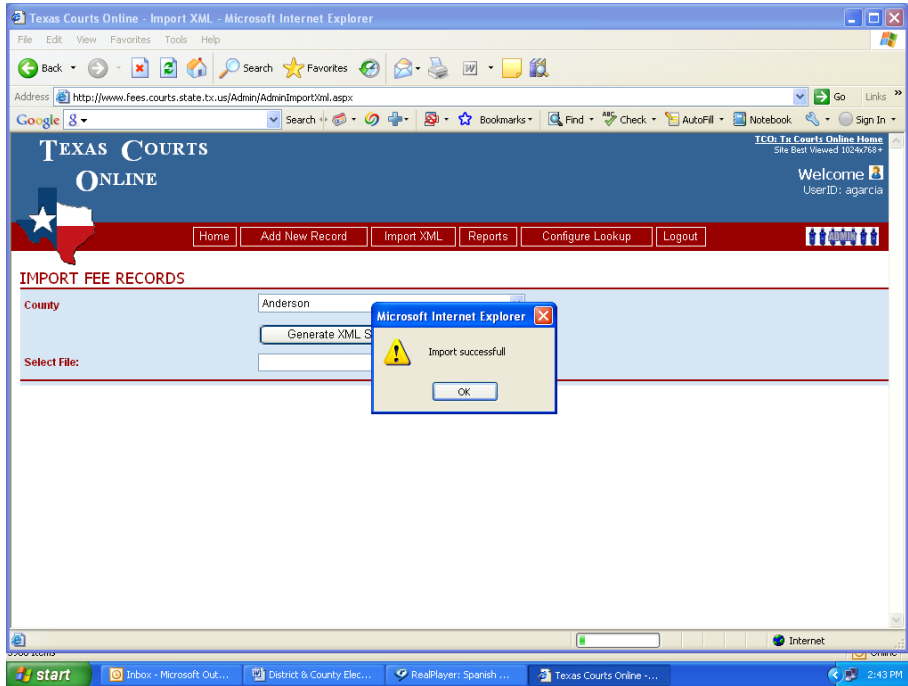
1. Select the **Import XML** button.



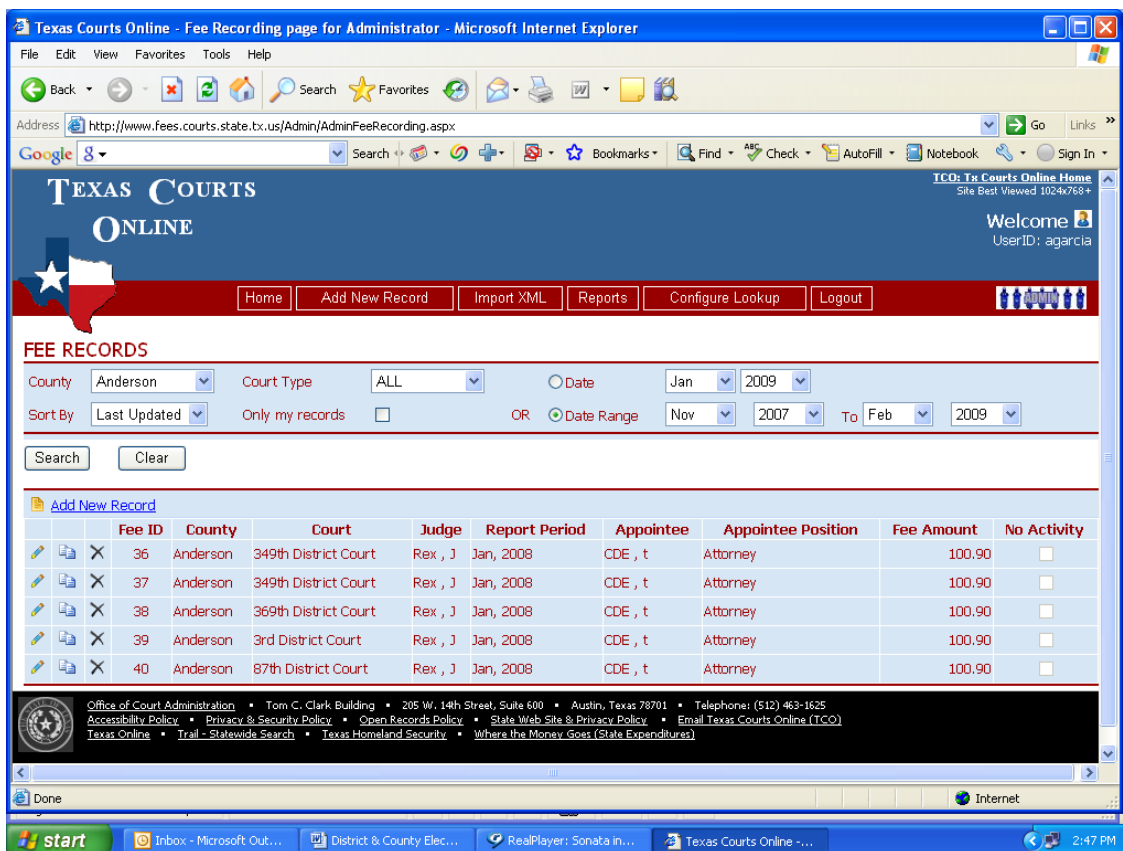
2. Press the **Browse** button to locate your XML file.



3. Press the **Import** button. Note whether the import was successful.



Your imported records should appear when you return to your Home page. You may log out. Your report is complete.



Editing Reports

You may update or delete records entered within the last 60 days. To make changes after 60 days, call Sandra Mabbett at (512) 463-1640.

To edit a record:

1. Search for the desired record(s) by using the Court, Date, Date Range, Sort, and Only My Records options at the top of the reporting screen. A list of the reports meeting the selected criteria will appear.


NOTE: All records that have been entered into the database for your county that meet the selected criteria will appear. To exclude those records entered by someone else, check the **Only My Records** box.

2. Select the pencil icon  next to the desired report.

3. Edit the selected record, then press **Save**.

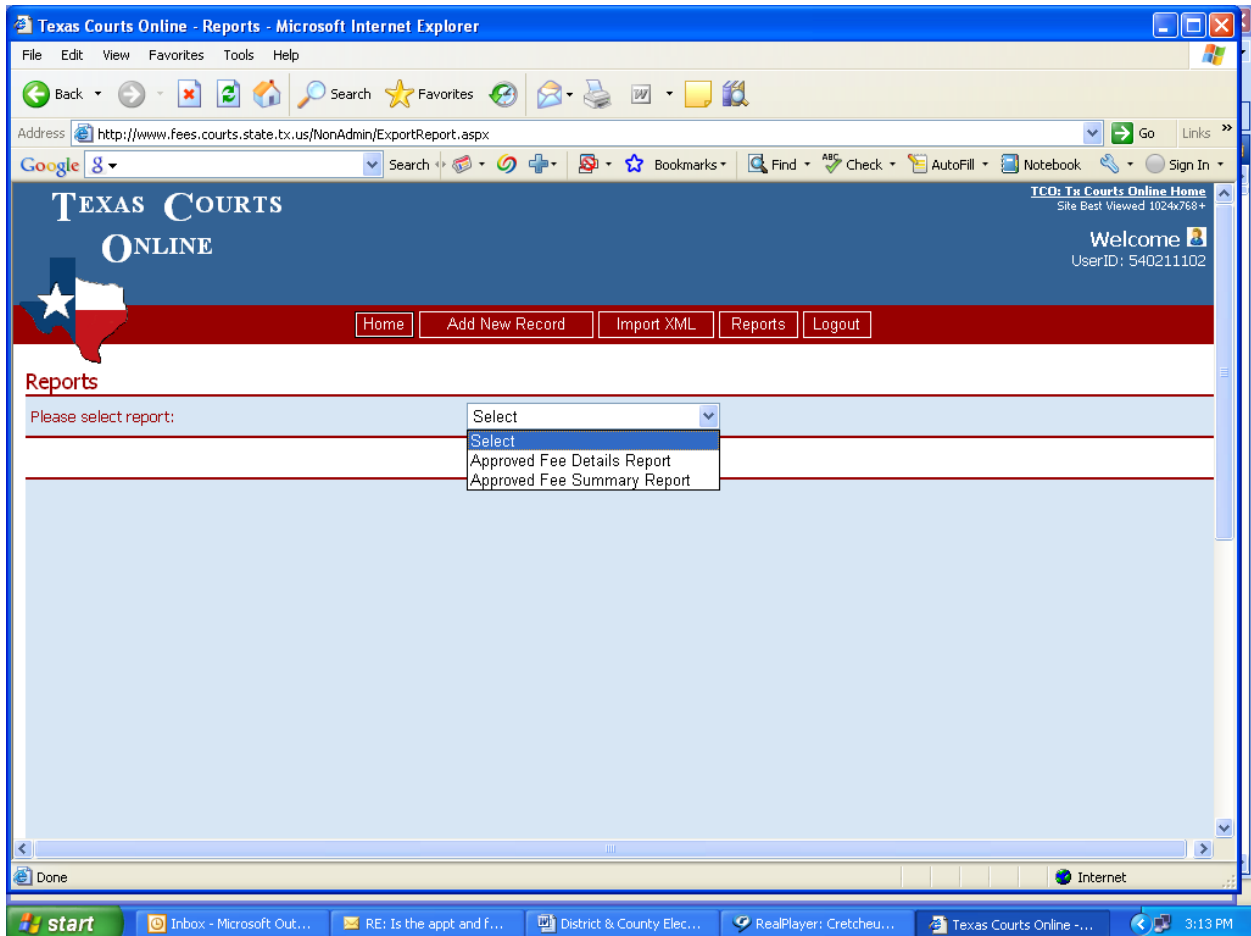
To delete a record:

1. Search for the desired record(s) by using the Court, Date, Date Range, Sort, and Only My Records options at the top of the reporting screen. A list of the reports meeting the selected criteria will appear.

2. Select the  icon next to the desired report.

Generating Reports

1. Select the **Reports** button, then select one of the two reports.



2. Select the desired criteria then press the **View Report** button.

3. Export the report results into the desired format (XML, comma delimited file, TIFF, Adobe pdf, or Excel).

Questions?

Technical problems with system, including problems with passwords: OCA Help Desk, service.desk@txcourts.gov

District and County Court Monthly Reports and Establishment of On-Line Reporting Accounts:

Sandra Mabbett, (512) 463-1640; sandra.mabbett@txcourts.gov

Instructions for completing the Appointments and Fees reports are available at:

<http://www.courts.state.tx.us/oca/required.asp>.

Other general reporting questions or concerns: Angela Garcia, (512) 936-1358,
angela.garcia@txcourts.gov

If additional selections need to be added for the **Position to Which Appointed, Fee Source, or Fee Type** fields please contact the Judicial Information Division at (512) 463-1640 or ReportingSection@courts.state.tx.us.

Questions?

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