# The Supreme Court of Texas

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November 2, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Rule of Judicial Administration 14

Dear Chip:

After six public hearings over the last year and extensive research, the Texas Judicial Council has submitted their final Report on Public Access to Court Records to the Supreme Court of Texas. The report includes a proposed Rule of Judicial Administration 14.

The Court asks that I submit the report to the Supreme Court Advisory Committee for study. Specifically, the Court requests that the subcommittee on the Rules of Judicial Administration consider the mechanics of the proposed rule, assuming the Court adopts the policy recommendations of the Judicial Council, and present the rule, with any recommendations, to the full committee during the November 12th meeting. In the meantime, the Court will continue studying the policy recommendations of the Texas Judicial Council and, hopefully, report to the subcommittee informally sometime next week.

I apologize for the short time frame. However, as you probably know, there currently are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance. The Court believes this is a matter better addressed by the judiciary than the legislature.

Kindest Regards,

Lisa Hobbs
Rules Attorney

Enclosures (3)

cc: Hon. Nathan L. Hecht (w/o enclosures)
Supreme Court of Texas

Michael A. Hatchell, Chair
Subcommittee on Rules of Judicial Administration


# PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -

August 2004

# TEXAS JUDICIAL COUNCIL

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CHAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.


August 30, 2004

Chief Justice and Justices
The Supreme Court of Texas

Ladies and Gentleman:

With input from the judiciary, the legislature, and the public, I am pleased to submit to you our report and recommendations *Public Access to Court Case Records in Texas*.

As you know, the Texas judiciary has long recognized the common law right and the presumption of public access to court case records. With recent technological advances, court clerks are now able to increase that accessibility by maintaining and disseminating court documents in an electronic format. Because court case records often contain sensitive and personal information, (e.g., financial documents, social security numbers, medical records), the Texas Judicial Council (Council) created the *Committee on Public Access to Court Records* (Committee) to examine and make recommendations regarding the personal privacy and public safety implications that arise when case records are made available to the public through the internet.

In July 2004, after holding six public hearings, conducting extensive research, and analyzing the relevant federal and state policies, rules, and statutes, the Committee submitted its report and recommendations to the Council for consideration. During our August 2004 public hearing, the Council discussed the work of the Committee, took additional public testimony, amended the recommendations, and adopted this report.

The Council is appreciative to those who have contributed their time and expertise to this important endeavor. Your valuable input and dedication to the judiciary is imperative to the continued success of the Council's initiatives.

Sincerely,

Thomas R. Phillips
Chair, Texas Judicial Council
Chief Justice, Texas Supreme Court

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Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.


July 16, 2004

Members, Texas Judicial Council

Dear Members,

As chair of the Committee on Public Access to Court Records (Committee), I am pleased to submit to the Texas Judicial Council (Council) the attached report *Public Access to Court Case Records in Texas.*

In November 2003, Chief Justice Phillips appointed this Committee to develop a comprehensive access policy that protects the public's access to court documents and maintains the integrity of the Texas Judicial System. To comply with the charge, the Committee held six public hearings, conducted extensive research, and analyzed the federal and state policies, rules, and statutes. The Committee focused on the privacy and safety implications that arise when electronic adjudicative-type case records are made available to the public on the internet. With input from the legislature, the judiciary and the public, the Committee adopted the following unanimous recommendations:

1. The Texas Supreme Court (Court) should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format for each matter in which this information must be included. The form would include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child. References to the sensitive data in any pleading or party filing would be made in an abbreviated format as specified by the Court. The form would be exchanged among parties and attorneys and be filed at the courthouse but not be made available to the public.

2. The Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While several members recommend that public access to paper documents and electronic documents be treated the same, some of those members acknowledged that there may be some information that is not appropriate for internet publication and that should be made confidential both at the courthouse and on the internet.

3. The Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.

While the Committee strived to reach a consensus on one comprehensive statewide access policy, the members ultimately adopted two alternative approaches for your consideration.

Alternative I: Open Remote Access. Treat remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. Place the following limitations on remote public access:

(1) Only court-created records (e.g., indexes, court calendars, dockets) may be accessible by remote electronic means.

(2) Remote access to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.

(3) Regardless of whether a subscriber-type system is in place, the following case records should be excluded from remote access: (a) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records; (b) pretrial bail or presentence investigation reports; (c) statements of reasons or defendant stipulations in criminal proceedings, including any attachments thereto; and (d) income tax returns.

(4) Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, should be excluded from remote access.

Thank you for the opportunity to participate in this endeavor. I hope that the work and recommendations of the Committee will provide the Council, the Court, and future policymakers with the information needed to make informed decisions that benefit the citizens of Texas.

Sincerely,

Polly Jackson Spencer

Polly Jackson Spencer
Judge, Bexar County Probate Court #1
Chair, Committee on Public Access to Court Records


# PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -

August 2004

# TEXAS JUDICIAL COUNCIL

## COMMITTEE ON PUBLIC ACCESS TO COURT CASE RECORDS

### *ACKNOWLEDGMENTS*


***Judicial Council Members***

Judge Polly Jackson Spencer, Probate Court No. 1 (San Antonio)
Mr. Lance Byrd, Sendero Energy, Inc. (Dallas)
Senator Robert Duncan, (Lubbock)
Judge Allen Gilbert, San Angelo Municipal Court (San Angelo)
Judge Melissa Goodwin, Justice of the Peace, Precinct 3 (Austin)
Representative Will Hartnett (Dallas)
Ms. Ann Manning, McWhorter, Cobb & Johnson. L.L.P. (Lubbock)
Judge Orlinda Naranjo, Travis County, Court at Law No. 2 (Austin)
Chief Justice Thomas R. Phillips, Supreme Court of Texas (Austin)
Chief Justice Sherry Radack, 1st Court of Appeals (Houston)
Judge Sharolyn Wood, 127th Judicial District Court (Houston)

***Non-Council Members***

Mr. Charles Bacarisse, Harris County District Clerk (Houston)
Ms. Wanda Garner Cash, Freedom of Information Foundation of Texas (Baytown)
Mr. David Gavin, Department of Public Safety (Austin)
Dr. Tony Reese, University of Texas School of Law (Austin)
Dr. Dianne Wilson, Fort Bend County Clerk (Richmond)
Dr. Ernie Young, University of Texas School of Law (Austin)

***Project Staff***

Elizabeth Kilgo, Director
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# I. Introduction

The judiciary has long recognized that case file documents, unless sealed or otherwise restricted by statute or court rule, are available at the courthouse for public inspection and copying. The common law right and the presumption of public access to court records "relate to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty, and respect for our legal system."[1] Yet, those access rights have traditionally been subjected to the "practical obscurity" of physically locating documents and information maintained among the voluminous paper files in courthouses located throughout the country. With the emerging use of electronic filing and imaging technology, however, court documents can now be easily accessed, duplicated, and disseminated from locations outside the courthouse. The "[i]ncreased use of the Internet and other powerful databases—both in the judicial system and among the general public—is lowering the barriers to access for parties that have an interest in that information. Personal, often sensitive, information now may be accessed and manipulated from a distance and used in ways not envisioned..."[2]

Fortunately, the judiciary has been mindful of the potential privacy and safety implications associated with modern technologies. *See Whalen v. Roe,* 429 U.S. 589, 605 (1977) ("We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed"); *United States Dep't of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749, 764 (1989) ("Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information..."). Likewise, the judiciary has recognized that the public's right to access court documents may be limited in some circumstances. *See Nixon v. Warner Communications, Inc.,* 435 U.S. 589, 598 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents... It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes"); *Taylor v. State,* 938 S.W.2d 754, 757 (Tex. App.–Waco 1997) (quoting *Nixon*); *Dallas Morning News, Inc. v. Fifth Court of Appeals,* 842 S.W.2d 655, 658-659 (Tex. 1992) (quoting *Nixon*); *United States v. Amodeo,* 71 F.3rd 1044, 1048-1049 (2d Cir. 1995) ("Unlimited access to every item turned up in the course of litigation would be unthinkable. Reputations would be impaired, personal relationships ruined, and businesses destroyed on the basis of misleading or downright false information... Unlimited access, while perhaps aiding the professional and public monitoring of courts, might adversely affect law enforcement interests or judicial performance...").

[1] See *In re Continental Illinois Securities Litigation,* 732 F.2d 1303, 1308 (7th Cir. 1984).

[2] See *Study of Financial Privacy and Bankruptcy,* U.S. Justice Department, Treasury Department, and Office of Management and Budget (January 2001).

Further, the courts have acknowledged Congress's awareness that the privacy concerns of private citizens may outweigh the need for public access to information maintained by a federal agency. *See Sherman v. Department of the Army,* 244 F.3d 357, 360-361 (5th Cir. 2001) "...Congress created nine exemptions [in the Freedom of Information Act] through which federal agencies may restrict public disclosure of information that would threaten broader societal concerns. *See 5 U.S.C. § 552*(b). The informational privacy interests of private citizens are among those concerns recognized and addressed by Congress in these exemptions.); *Reporter's Comm., 489 U.S. at* 770 ("...the fact that 'an event is not wholly 'private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information' (citations omitted)"). Today, the judiciary faces a challenge presented by advanced technology to promote increased access to court information while preserving the use of our court system as a meaningful avenue to enforce the laws of our country.

## II. Committee Charge

In November 2003, Chief Justice Thomas R. Phillips, chair of the Texas Judicial Council, appointed the *Committee on Public Access to Court Records* (Committee) to develop a comprehensive statewide access policy that maintains the integrity of the judicial process while protecting the important interests of public access. Because of the sensitive information contained in many court documents, (e.g., financial documents, social security numbers, medical records, personnel files, proprietary information, tax returns, plea agreements, juror information, victim information, and names of minor children), the Committee was instructed to consider the personal privacy and public safety implications that arise when electronic adjudicative-type case records are made available on the internet.

To comply with the charge, the Committee held six public hearings,[3] conducted extensive research, and analyzed the relevant federal and state policies, rules, and statutes. In July 2004, after receiving input from the legislature, the judiciary, and the public, the Committee submitted its report with recommendations to the Council for consideration.[4] This report: (1) provides an overview of the Committee deliberations; (2) discusses the development of the federal public access policy; (3) provides information about the public access policies implemented in other states; and (4) details the Council's key recommendations.

## III. Committee Deliberations

***The Need for Guidance***

Currently, there are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance from the judiciary or legislature. For example, the Tarrant County District Clerk and the Fort Bend County Clerk both maintain all of their respective court records in an electronic format and provide public access through the

[3] See Appendix A for a copy of the official minutes of each public hearing.

[4] See Judge Spencer's cover letter to this report for the Committee's recommendations.

internet to those documents that are not otherwise sealed by the court or made confidential by statute. While the clerk in Tarrant County provides remote access only to subscribers who apply for a log-in and password and submit a deposit and monthly fee, the clerk in Fort Bend County provides remote access to the public at no charge. In Harris County, the district clerk provides remote access to the court's civil orders for a fee. However, due to concerns expressed by the Houston Family Bar Association, family law orders are available only to practicing family law attorneys who must obtain a log in and password.

After learning about these and other state court websites, the Committee acknowledged the need for uniformity and guidance through the development of a statewide policy that governs the remote electronic distribution of court documents. Without a comprehensive policy in place, the public will likely encounter many variations of remote court access systems that offer different levels of access, service, and user requirements.

***Public Trust and Safety***

The Committee was concerned about the sensitive and personal information that is scattered throughout a typical case file. Some members believe that without the historical "face-to-face" encounter at the courthouse, the likelihood that information will be retrieved for improper purposes is greatly increased. Internet access to guardianships, conservatorships, custody, or competency proceedings that contain information about an individual's physical, mental, or financial well-being would provide the public with detailed information about those individuals who are most vulnerable in our society. The civil courts monitor children, families, and business dealings. People generally trust the court system to settle their personal and professional disputes. But some members fear that the judiciary may loose that trust if too much information becomes readily available to the public. If engaging in a court process means that an individual's personal information may be broadcast on the internet, then the nature of civil litigation may move from a public to a private forum. Members discussed the possibility that high school students would be able to access the divorce records or custody dispute records of their friend's parents and display them at school. They also recognized that an individual who is not even a party to a suit may be mentioned in a court record and that some parties involved in a court case are not in court on a voluntarily basis. The Committee questioned how the judiciary might protect the identity and location of sexual assault or domestic abuse victims, handle victim statements and sensitive exhibits that are attached to motions or pleadings, ensure the accuracy of the information published, and handle temporary orders, protective orders, and peace bonds that have not been ruled upon.[5]

Some members believe that statutory protections are the appropriate means of protecting such privacy interests.[6] They maintain that if a document is available at the courthouse, it should be made available on the internet. They see no reason to differentiate between court records that are maintained in electronic form rather than paper form. Nevertheless, other members point out that the Texas legislature has not examined the confidentiality of court records in the context of an electronic environment. Consequently, the current statutory scheme does not take into account the posting of electronic court records on local court websites. Likewise, they note that

[5] The Committee was cognizant of the difficulties encountered in the Kobe Bryant rape case where sealed court documents that included the accuser's last name were mistakenly posted to the court's web site.

[6] See Appendix B for a detailed list of those court records that are confidential by Texas statute.

the Texas Legislature has recently placed additional restrictions on public access to otherwise open court records. The 78th Texas Legislature amended the Texas Family Code to provide that in Harris County, all pleadings and documents filed with the court in a suit for the dissolution of marriage are confidential until after the date of service of citation or the 31st day after the suit was filed. Also, an application for a protective order in Harris County is confidential until after the date of service of notice of the application or the date of the hearing on the application, whichever is sooner, and an application for the issuance of a temporary ex parte order is confidential until after the date that the court or law enforcement informs the respondent of the court's order.[7] Further, those members referred to Florida's experience, discussed in Section V below, where public outcry prompted a legislative, and later a judicial, moratorium on remote public access to court records.

***Benefits of Remote Access***

Given these concerns, some members questioned the rationale for placing *any* case records on the internet for world-wide access and scrutiny. They felt that an institutional change of this magnitude ought to be justified and were curious about the need for any access beyond the traditional method of inspecting court records at the courthouse. Nevertheless, advocates of electronic distribution responded by pointing to the strong public demand, ease of access, the mobility of our society, and the large cost savings associated with both storing and retrieving paper documents. By maintaining all recorded documents since 1838 in an electronic format, the county clerk in Fort Bend County reduced the amount of staff necessary to respond to public records requests. Over the next 5 years, the district clerk in Harris County expects to image over 400 million documents, reducing the court's physical storage requirements from approximately 180,000 to 40,000 square feet. Likewise, parties, attorneys, and the general public benefit from the convenience of accessing case information from a remote location, even on weekends and after regular business hours, without the necessity of traveling to the courthouse.

***Identity Theft***

The Committee unanimously agreed that certain personal identifiers maintained in both paper and electronic court files, generally for administrative purposes, should not be accessible to the public. Following the lead of the Federal Judiciary and in an effort to address increasing incidences of identify theft, the members deemed as confidential the following personal identifiers in their complete form: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a crime victim in the proceeding; and the name of a minor child. The Committee envisioned the implementation of a confidential "Sensitive Data Form" such that the above personal identifiers would be documented in their complete form, but referred to throughout the case file in pleadings, motions, interrogatories, and other documents in an abbreviated or partially obscured format. Recognizing that it is impracticable, if not impossible, for the courts and court clerks to redact or police the personal or sensitive information that might be filed in a typical case, the Committee agreed that the burden of compliance should fall on the individual filing a court document and should be followed only on a prospective basis.

[7] See House Bill 1391, 78th Regular Session (2003).

***Court-Created Documents***

The Committee chose to differentiate between court-created documents prepared by the judge or court personnel and party or non-party case filings prepared by someone outside the court. The Committee generally agreed that providing remote access to court-created calendars, dockets, or indexes of cases serves a legitimate public interest by enhancing the public's ability to monitor the functions of the courts. Additionally, such remote access allows the parties and their attorneys to track the status and activities of their respective cases without the inconvenience of contacting court personnel or physically visiting the courthouse. Likewise, the Committee agreed that because the court controls the contents of the court minutes, notices, orders and judgments, remote public access to those documents should not significantly impair individual privacy interests. However, the Committee noted that the state judges and court personnel should be cognizant of the privacy implications associated with information provided in court-created documents that may be published on the internet. Further, state judges and court personnel should minimize and avoid the inclusion of unnecessary personal or sensitive information in any court created document.

***Party and Non-Party filings***

As discussions moved beyond personal identifiers and court-created records, the Committee focused on the contents of party and non-party filings. The members revisited the public safety and privacy implications associated with the electronic publication of extremely sensitive information, including, but not limited to: medical records, tax returns, divorce proceedings, harassment proceedings, proprietary business information, asset inventories, pre-sentence investigation reports, search warrants, arrest warrants, and exhibits depicting nudity, violence or death. The Committee questioned whether people will continue to use and trust the court system to settle their personal and professional disputes knowing that the information contained in the case file may be published on the internet. Likewise, the members discussed the court's lack of control regarding the contents of those documents that are filed by the parties and non-parties in a case. Given the Committee's desire to maintain broad public access while ensuring privacy, personal safety, and public confidence, the members considered some electronic protections including, but not limited to: requiring users to obtain a log-in and password; charging a user or subscriber fee; requiring that any data disseminated by the court not be sold or otherwise distributed to third parties nor be used for commercial or solicitation purposes; and prohibiting the bulk distribution of electronic records. For additional guidance, the Committee reviewed and examined the electronic access policies established by the Federal Judiciary and the judiciaries in other states.

## IV. Federal Policy Development

When the United States Judicial Conference examined public access to electronic federal court records, the Administrative Office of the United States Courts (AOUSC) made several assumptions to guide policy development including the following:[8]

- There is a strong legal presumption that documents in case files, unless sealed, are public records available for public inspection and copying;

[8] See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 8-9, (1999).

- The presumption of unrestricted public access to case files promotes public understanding of and confidence in the court system;
- The transition to electronic case files raises important legal and policy issues that are not addressed explicitly in current law or judiciary access policies;
- The traditional reliance on litigants to protect their privacy interests through protective orders or motions to seal may be inadequate to protect privacy interests;
- Access rights, whether based on the common law or on the Constitution, are not absolute. The inherent authority of the judiciary to control the dissemination of case files may justify restriction on access to electronic case files to protect privacy;
- Making case files available on the internet may lead to the dissemination of information that would harm the privacy interests of individuals. It also may deter litigants from using the courts to resolve their disputes; and
- The judiciary has a special custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of case files. Like other government entities that collect and maintain sensitive persona information the judiciary must balance the public interest in open court records against privacy and other legitimate interests of nondisclosure.

The AOUSC also presented several national policy alternatives on access to electronic case files.[9]

**1. Extend current open access policies to cover electronic case files.** This approach would follow the belief that electronic case files should be treated the same as paper files. There would be no restriction on remote access. Litigants and others would have to assert their privacy interests with appropriate motions.

**2. Review the elements of the "public" case file to better accommodate privacy interests.** This approach would evaluate the need to include specific information or documents in the public case file, whether in paper or electronic format. A new definition of the "public case file" would need to be developed to better accommodate privacy interests. Like alternative #1, this approach assumes that the entire public case file would be made available electronically without restriction. Private or sensitive information would be excluded from the public case file, whether in paper or electronic format.

**3. Provide limited access to certain electronic case file information to address privacy concerns.** Under this approach, judicial leaders would limit remote electronic access by identifying categories of case file information or specific documents that may implicate privacy concerns. Remote electronic access might be limited depending on the level of access granted to a particular individual. For example, judges and court staff would have unlimited access, while litigants and attorneys would have unrestricted access to the files relevant to their own cases. The public would have remote electronic access to a subset of the entire case file that includes pleadings, briefs, orders, and opinions. This

[9] See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 9-10, (1999).

approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person.

In September 2001, the Judicial Conference adopted a policy regarding privacy and public access to electronic case files as follows:[10]

- General Principles:

  1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.
  2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the internet.
  3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.
  4. Except where otherwise noted, the policies apply to both paper and electronic files.
  5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.
  6. The availability of case files at the courthouse will not be affected or limited by these policies.
  7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

- Civil Cases: Documents in civil case files should be made available electronically to the same extent that they are available at the courthouse except that Social Security cases should be excluded from electronic access and certain "personal data identifiers" should be modified or partially redacted by the litigants. These identifiers are social security numbers (only the last four digits should be used), dates of birth (only the year should be used), financial account numbers (only the last four digits should be used) and names of minor children (only the initials should be used).
- Criminal Cases: Public remote electronic access to criminal case documents is prohibited.
- Bankruptcy Cases: Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; Section 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended to allow the court to collect a debtor's full Social Security number but display only the last four digits.
- Appellate Cases: Appellate case files are to be treated the same as lower level cases. The *case file*, whether electronic or paper, is defined as the collection of documents officially filed by the litigants or the court in the context of litigation, the

[10] See *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* (2001).

docket entries that catalog such filings, and transcripts of judicial proceedings. The term generally does not include non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff.

The federal courts provide public access to electronic files, both at the courthouse and beyond the courthouse, through a web-based system, the Public Access to Court Electronic Records (or "PACER") system, that contains both the dockets (a list of the documents filed in the case) and the actual case file documents. Users must open a PACER account and obtain a login and password which creates an electronic trail.

In March 2002, the following two modifications to the policy were adopted: (1) remote public access became permissible for "high profile" criminal case file documents in cases where demand for copies of documents places an unnecessary burden on the clerk's office, the parties have consented to such access, and the presiding judge finds that such access is warranted by the circumstances; and (2) a pilot project was created to allow several courts to return to the level of remote public access to electronic criminal case files that they provided prior to the Conference adoption of the policy restricting such access. In September 2003, the Conference amended the prohibition regarding criminal cases to permit electronic access to criminal cases. As in civil cases, certain "personal data identifiers" should be modified or partially redacted by attorneys and litigants in criminal cases.

## V. State Court Policy Development

### *a. Model Policy*

In an effort to provide guidance to and consistency among state judiciaries, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) issued the CCJ/COSCA Guidelines in August 2002.[11] The project "Developing a Model Written Policy for Access to Court Records," was funded by the State Justice Institute and staffed by the National Center for State Courts and the Justice Management Institute. The model policy provides a framework from which judicial leaders can develop their own public access policy. The CCJ/COSCA Guidelines are based on the following premises:

- Retain the traditional policy that court records are presumptively open to public;
- As a general rule access should not change depending upon whether the court record is in paper or electronic form, although the manner of access may vary;
- The nature of certain information in some court records is such that remote electronic public access may be inappropriate, even though public access at the courthouse is maintained;
- The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge; and
- Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

[11] See *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*, Martha Wade Steketee, Alan Carlson (Oct. 18, 2002).

The CCJ/COSCA Guidelines do not require state courts to convert their court records to electronic form or to make records available remotely. In developing a public access policy, the CCJ/COSCA Guidelines suggest that state judiciaries examine the effectiveness of existing state statutes or rules and focus on a policy that will provide guidance to courts as their technology is upgraded.

### *b. Other State Policies*

Several states, including Colorado, Idaho, and Missouri, have enacted public access policies for electronic records in the context of a database or case management system and generally allow remote electronic access to the calendar, register or actions, and general docket-type information rather than to the actual party and non-party case filings. For example, in Colorado, only data elements contained in the Integrated Court On-Line Network database and approved by the *Public Access Committee* may be released electronically.[12] Those records generally include case numbers, court, division, primary party name(s), date of birth, attorney, calendar events, bonds, judgments, charges case dispositions, and sentences for felony, misdemeanor, traffic, civil and domestic relations cases. Other states, including Arizona, California, Florida, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New York, Utah, Vermont, Washington, and Wisconsin, have adopted or continue to debate policies to address the personal privacy and personal safety implications associated with remote electronic access to case records.

**Arizona**

In August 2000, the chief justice created the *Committee to Study Public Access to Electronic Court Records* to develop policy recommendations regarding public access to electronic judicial records. Arizona Supreme Court Rule 123, which governs judicial records policy, prohibits public access to financial account and social security numbers appearing in administrative files and bars disclosure of the following information contained in case records: any record protected by law, certain juvenile treatment records including dependency, adoption, severance and related proceedings; adult criminal history, medical and psychiatric records, and certain probation and pretrial services records. Most identifying juror information including phone and address is confidential.

In October 2002, the committee issued recommendations which provide that remote electronic public inspection would not be available for certain case records and data elements (presentence reports; criminal case exhibits unless attached to a filing; petitions for orders of protection or injunctions against harassment; victims' names; and docket and calendar information on unserved orders of protection or injunctions against harassment). The parties' residential addresses would not be displayed on Web sites offering basic case information from a court's case management system. The committee suggests that the Arizona Supreme Court should develop a confidential form for sensitive data that would be available for public inspection at the courthouse only on a showing of good cause, and also educate judges, attorneys, and the public that case records are publicly accessible and may be available on the internet. The form would contain financial account numbers, social security numbers, victims' addresses and phone numbers and names of juvenile victims. The parties would be responsible for omitting or redacting such confidential information in documents filed with the court. Also, to determine the

[12] See Chief Justice Directive 98-05; Public Access Policy 98-01 through 98-03.

costs and benefits of offering remote electronic access to state court criminal case files, the committee recommends that the judicial department conduct a three year pilot project that would provide fee-based remote access to users who register with the court for a log-in and password. Remote electronic access would be afforded on a case-by-case basis and bulk data would not be electronically accessible on the internet.

The Arizona Supreme Court has formed a workgroup to review and refine the committee's recommendations.

**California**

California Rules of Court 2070-2077 are intended to provide the public with reasonable access to electronic trial court records, while protecting privacy interests. They are based on the conclusion of the *Court Technology Advisory Committee* that electronic records differ from paper records in three important respects: (1) ease of access, (2) ease of compilation, and (3) ease of wholesale duplication. The rules are also based on the committee's conclusion that the judiciary has a custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of electronic case files. They are not intended to create a right of public access to any record the public is not otherwise entitled to access. The rules provide that to the extent feasible, courts must provide electronic access both remotely and at the courthouse to the registers of action, calendars, indexes, and all civil case records except that remote electronic access is not available for the following proceedings: family code; mental health; juvenile court; criminal; guardianship or conservatorship; and civil harassment.[13] Likewise, certain data elements must be excluded from the calendar, index, and register of actions: social security numbers; financial information; arrest warrant information; search warrant information; victim information; witness information; ethnicity; age; gender; government-issued identification numbers; driver's license numbers; and dates of birth.

Electronic case record access is available on a *case-by-case basis* when the record is identified by the number, the caption, or the name of a party. A court may provide *bulk distribution* of only its calendar, register of actions, and index.[14] If an electronic record becomes inaccessible by court order or operation of law, the court is not required to take action with respect to any copy that was made by the public before it became inaccessible. Users must consent to access the records only as instructed by the court and must consent to the court's monitoring such access. Contracts with vendors to provide public access must be consistent with the policy and must require the vendor to protect the confidentiality of court records as required by law or court

[13] See *Public Access to Electronic Court Records*, Court Technology Advisory Committee, pp. 23-24 (Oct. 2001)("In drafting the rules, the committee considered restricting remote access to specific data elements in a court record, such as a party's financial account numbers, but concluded that the problem with this approach is one of practical implementation: it would require someone in the clerk's office to carefully read each document filed with the court to ascertain whether there are any matters in the document that need to be redacted, and might subject the courts to liability for failing to redact all confidential data elements. Therefore, the committee concluded that the more workable approach is to limit remote electronic access to certain categories of cases....").

[14] *Id.* at 19 (The committee was concerned about media requests for the court's entire database, which includes confidential information. To comply with such requests, court personnel would have to review each record in the database and redact all confidential information from the records – "a costly, time-consuming, and perhaps impossible task.").

order and must specify that the court is the owner of the records with the exclusive right to control their use. To the extent feasible, specifies minimum data requirements for electronic court calendars, indexes, and registers of action.

In February 2004, the California Judicial Council issued an interim rule which will sunset at the end of 2004 to provide for remote electronic access to state court records in high profile criminal cases where there is extraordinary demand that significantly burdens court operations. Trial courts should redact personal information including social security numbers, home addresses and telephone numbers, and medical and psychiatric records prior to posting them on the internet.

**Florida**

In April 2002, the Judicial Management Council submitted to the Florida Supreme Court a preliminary report which included a recommendation that the Supreme Court take steps to keep confidential and sensitive information secure from inappropriate disclosure through the implementation of a uniform regulation. In June 2002, the Florida Legislature created a 21-member *Study Committee on Public Records* to address electronic assess to court records and established a temporary moratorium on unrestricted electronic access of court records that prohibited any clerk from placing on a publicly available internet website an image or copy of an official record of (1) a military discharge; (2) a death certificate; or (3) a court record relating to matters of cases governed by the family law, juvenile, or probate rules. The committee issued its final report in February 2003 and called upon the Florida courts to minimize the collection of unnecessary personal and identifying information and to determine to what extent information should be accessible over the internet.

In November 2003, the Florida Supreme Court issued an administrative order creating the *Committee on Privacy and Court Records* to recommend comprehensive policies to regulate the electronic release of court records.[15] The order specifies that the committee consider a plan that includes, at a minimum: requirements as conditions of release; a process for a clerk to request and gain release approval; categories of records that may not be electronically released; and procedures for ensuring that any electronic release system comply with applicable law, rules, and orders. The committee must also initiate strategies to reduce the amount of personal and sensitive information that unnecessarily becomes part of a court record and recommend categories of information that are routinely included in court records that the legislature should consider for public access exemptions. The court further ordered that, effective immediately, no court record may be released in electronic form excluding: a court record which has become an "official record" (i.e., court orders, property records, liens and similar documents); a court record transmitted to a party or an attorney of record; a record transmitted to certain governmental agencies or agents; a record that has been solitarily and individually requested, has been manually inspected by the clerk, and contains no confidential or exempt information; a record in a case which the chief justice has designated as a significant public interest after manual inspection for confidential information; progress dockets (limited to case numbers; case types; party names, addresses and dates of birth; names and addresses of counsel; lists of indices of judgments, orders, pleadings, motions, notices; court events; clerk actions and dispositions provided that no confidential information is released); schedules and calendars; records

[15] See Supreme Court of Florida Administrative Order No. AOSC03-49, Committee on Privacy and Court Records.

regarding traffic cases; appellate briefs, orders and opinions; and court records inspected by the clerk and viewed via a terminal within the office of the clerk, provided no confidential information is released.

**Indiana**

Based on the recommendations of the *Task Force on Access to Court Records*, in February 2004, the Indiana Supreme Court adopted revisions to Indiana Administrative Rule 9 to take into account public access to electronic court records. The revised rule generally follows the CCJ/COSCA Guidelines. Information already made confidential by Indiana statute includes records regarding adoptions, AIDS, child abuse, drug testing, grand jury proceedings, juvenile proceedings, paternity, presentence reports, marriage petitions w/o consent for underage persons, arrest/search warrants, indictments/information prior to return of service, medical, mental health, or tax records, juror information, protection orders, mediation proceedings, and probation files. In addition to those records made confidential by federal law, state statute or court rule, the rule excludes from public access social security numbers; addresses, phone numbers, dates of birth and other personal identifiers for: witnesses or victims in criminal domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings; account numbers, credit card numbers and PINs; and orders of expungement in criminal or juvenile proceedings. While bulk distributions are permitted, all such requests must go through the administrative office of the courts.

**Maryland**

In March 2001, the Court of Appeals Chief Judge Robert M. Bell appointed the *Committee on Access to Court Records* to study the court's system of public access to court records and, in particular, to electronic court records. Records that are confidential by statute or rule include records regarding adoptions, guardianships, certain juvenile proceedings, certain marriage applications, certain abuse/neglect records, HIV records, certain search/arrest warrants, presentence investigation reports, grand jury information, certain medical or psychological records, tax returns, and social security numbers.

In December 2003, the committee issued its final report and recommendations which suggested in large part the continuation of the original policy that court records generally remain open to the public.[16] The committee concluded that the information currently available in electronic form, excluding some pilot programs, consists of docket sheets that contain identifying party information and describe case events such as filing and disposition, and that this information does not warrant protection beyond the current protections provided by statute and case sealing orders. The committee noted that as case files become computerized, the nature of some information in case files (e.g., bank acct numbers, credit card numbers, and medical records) is such that remote access may harm individuals or businesses, and the court may then want to consider whether the existing protections are adequate.[17]

In March 2004, after further examination and public comment, the Court of Appeals of Maryland adopted Title 16, Chapter 1000 of the Maryland Rules, Access to Court Records, which are based in part on the committee's recommendations and create a general presumption of

[16] See Maryland's *Report of the Committee on Access to Court Records*, pg. 6 (2002).
[17] *Id.* at 11.

openness.[18] The rules generally treat paper and electronic records the same. Records custodians that choose to provide access to electronic documents are encouraged provide the same level of access as is available at the courthouse, but are allowed to limit the manner and form of electronic access based upon system capabilities.[19] The Rules recognize the public access limitations established by statute or rule and generally provide that all other exclusions must be by court order after examination by a judge on a case-by-case basis.[20]

**Massachusetts**

The Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web, May 2003, governs public access to docket and calendar information that is or will be maintained in computerized case management systems. At this time, the policy does not allow documents submitted to the courts in connection with a case to be published on the internet. The Chief Justice for Administration and Management (CJAM), the Departmental Chief Justices, and others found that the ramifications of publishing information on the web are qualitatively different from those of making information available at the courthouse. The policy allows for publication of certain case information that enables litigants and attorneys to check the status and scheduling of cases in which they are involved. The following principles are in place to guide publication of trial court (and generally appellate court) case information on the internet:

- Provide some information about every case, except those that are categorically excluded as permitted below;
- For civil cases, all basic case information should be provided including the case caption, names of the parties, docket number, judge, court, case type, attorney information, past and future calendar events, and docket entries (unless excluded below);
- The same information provided in civil cases should be provided in criminal cases except that the defendant's name should not be disclosed and information regarding the offenses should be available;
- Impounded cases should include the case docket number, indicate the case is impounded, give information about the progress of the case, the name of the judge, and the attorneys who appear in the case. Any information that might identify the parties or the type of case, including docket entries, should be excluded;
- Case information that is excluded from public access by statute, case law, or court rule should not be included on the internet;
- Personal identifying information, including an individual's address, telephone number, social security number or date of birth, should not appear on a court web site; and
- The CJAM, in consultation with the Departmental Chief Justices, and subject to Supreme Judicial Court (SJC) approval, may decide that certain categories of cases or information or certain docket entries should be excluded or sanitized (provided that it is made clear that the docket entry available on the web site is not the same as the docket entry available at the courthouse).

The public may access case information located on a court web site through one or more of the following searches (subject to any CJAM amendments):

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[18] See Maryland Rule 16-1002. General Policy.

[19] See Maryland Rule 16-1008. Electronic Records and Retrieval.

[20] See Maryland Rule 16-1006. Required Denial of Inspection – Certain Categories of Case Records and Maryland Rule 16-1007. Required Denial of Inspection – Specific Information in Case Records.

- Civil cases may be searched by docket number, party name, judge, attorney, calendar event date, court and type of case;
- Criminal cases may be searched by docket number, judge, attorney, calendar event date, and court (searches by the name of the defendant, a victim or a witness is not permitted); and
- Impounded cases may be searched by docket number, judge, attorney and court (searches by party name, victim name, or witness name is not permitted).

**Minnesota**

In January 2003, the Minnesota Supreme Court established the *Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* to review the Rules of Public Access to Records of the Judicial Branch (Access Rules). In June 2004, the advisory committee issued its final report and recommendations. Among the several alternatives considered by the advisory committee were the following two approaches: (1) allow internet access to all court records that are accessible to the public in paper format, and make any necessary adjustments to both paper and internet records, or (2) try to retain the same level of public access to paper records and publish only a limited amount of those records on the internet. Noting that the "courts that have simply begun posting all public records on the internet have encountered numerous problems and have had to pull back and reconsider their policy in light of privacy concerns raised by persons identified in the records. The committee agreed that the potential for damage to individuals necessitates a careful approach."[21] Therefore, the advisory committee chose the second "go-slow" approach to providing more remote access to information. While the recommendations encourage courts to provide remote electronic access to the register of actions, calendars, indexes, judgment docket, or judgments, orders, appellate opinions, and notices prepared by the court, all other electronic case records would not be made remotely accessible. "The rule limits Internet access to records that are created by the courts themselves as this is the only practical method of ensuring that necessary redaction will occur."[22] Further, the public would not be granted remote access to the following data elements with regard to their family members, jurors, witnesses, or victims of a criminal or delinquent act: social security numbers and employer identification numbers; street addresses; telephone numbers; financial account numbers; and in the case of a juror, witness or victim, information that would provide for the identify of the individual.

Case records that are protected from public access under the current Access Rules include: domestic abuse records, until a temporary court order is executed or served upon the respondent; child protection records; court services records that are gathered at the request of the court to determine an individual's need for counseling or treatment, to assist in assigning an appropriate sentence or disposition, to provide the court with a recommendation regarding custody, and to provide the court with a psychological evaluation; criminal case records made inaccessible pursuant to the rules of criminal procedure; juvenile case records; records protected by statute – abortion, adoption, artificial insemination, commitments, compulsory treatment, wiretap warrants, identity of juvenile victims of sexual assault, presentence investigation report, custody

[21] See *Final Report, Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch*, p. 18 (June 2004).
[22] *Id.* at 42.

proceedings, juvenile court records, paternity proceedings, wills deposited for safekeeping, and juror data; and civil case records protected by order of the court.

**Missouri**

Missouri Supreme Court Operating Rule 2 governs public access to judicial records. All court records are presumed to be open to any member of the public for inspection or copying. The policy is not applicable to records made confidential pursuant to statute, court rules or court order. The rule does not create an obligation to make data available electronically. Data that identifies a person is available on a case-by-case basis. Electronic public indexes will be available by case number, file date, party name and calendar date, and may contain the case title, case type and status. The rule provides that electronic records that identify a person can include only the following data elements for civil cases, unless confidential by statute or rule: attorneys' addresses and names; file date and calendar dates; case number and type; date of birth; disposition type; docket entries; judge; judgment or appellate decision/mandate date; party address and name; and satisfaction of judgment date. Likewise, electronic records that identify a person can include only the following data elements for criminal cases, unless confidential by statute or rule: appellate mandate date; appellate opinion; attorneys' addresses and names; file date and calendar dates; bail amount; charges; case number and type; date of birth; disposition type; docket entries; defendant address and name; disposition type; finding and date; judgment and date; sentence and date; judge and law enforcement agency; offense tracking number; violation code and description. Note that case records containing social security numbers cannot be disseminated and court personnel cannot expunge or redact those numbers that appear in case records.

**New York**

In February 2004, the *Commission on Public Access to Court Records* submitted its report and recommendations to the Chief Judge of the State of New York.[23] The committee followed the lead of the Federal Judiciary with its recommendation that paper and electronic be treated the same and that no public case record should include full: social security numbers (use last 4 digits only), financial account numbers (use last 4 digits only), names of minor children (use initials only), and birth dates of any individual (use the year only). Compliance with these provisions lies with attorneys or self-represented litigants. The committee also recommended that in implementing internet access to case records, priority should be given to court calendars, case indices, dockets and judicial opinions. Other case records, such as pleadings and papers filed by the parties, should be made available on the internet on a pilot basis, in part, to test the policy and the need to exclude or redact certain data elements from filed documents. The recommended principles should apply prospectively. Information already confidential by statute includes records regarding: matrimonial actions, child custody, visitation and support; family court proceedings, abuse, neglect, support, custody & paternity; identity of victims of sexual offenses; HIV information; pre-sentence reports and memoranda in criminal proceedings; and sealed documents.

The committee also suggested that the UCS should determine whether additional rules should be adopted to assure compliance from filing attorneys, and consider what steps may be necessary to

[23] See *The Report to the Chief Judge of the State of New York*, Commission on Public Access to Court Records (February 2004).

assure compliance by self-represented litigants; provide education to attorneys, litigants and judges concerning public access to court records over the internet; determine how to protect at-risk individuals such as victims of domestic violence and stalking from being identified and located by use of their home/work phone numbers and addresses in public court records; and adopt rules regarding earlier created case records that may be placed on the internet.

**Utah**

In January 2003, the Utah Judicial Council appointed the *Committee on Privacy and Public Court Records* to consider the policies favoring public access to court records and the policies favoring privacy, and to recommend the classification of records as public or not public. The Committee has been asked to closely examine access to court records through electronic means such as the internet. The Committee was also asked to assess the current classification scheme regarding public access to judicial records which is set forth in 4-202.02 of the Utah Rules of Judicial Administration as follows:

- public;
- private – divorce records, driver's license histories, records involving commitment, juror information;
- controlled – records containing medical, psychiatric, or psychological data; custodial evaluations or home studies; presentence reports; the official court record of court sessions closed to the public and any transcript of them; any record the judicial branch reasonably believes would be detrimental to the subject's mental health or safety if released; any record reasonably believed to constitute a violation of normal professional practice or medical ethics if released;
- protected – personal notes or memoranda of a judge or person charged with a judicial function, drafts of opinions or orders, memoranda by staff)
- juvenile court legal records;
- juvenile court social and probation records;
- sealed – adoption case files; and
- expunged.

In general, the public may access public records, while the protected records and expunged records are exempt from disclosure. Sealed records may only be disclosed upon court order. The other categories may be disclosed to certain individuals involved in the proceedings or court personnel as specified.

The Utah courts currently provide free internet access to appellate opinions and dockets, general docket information maintained in the district court's case management systems, court rules and forms, reports and publications, and other information. More detailed district court case information is available through a subscription service. Rule 4-202.12 governs access to electronic data elements and provides that data elements other than public records will not be made available. Electronic records from which a person can be identified will be available on a case-by-case basis. Select data elements, known as indexes, which are limited to the amount in controversy, case number, case type, judgment date and amount, party address, party name assist the public in finding cases of interest and may be reported in bulk. The rule states that the judiciary is not responsible for incomplete or erroneous information and sets forth a process for requests.

**Vermont**

The Supreme Court of Vermont approved the Rules for Public Access to Court Records during the October 2000 Term. The rules provide that all case and administrative records of the Judicial Branch are open to any member of the public for inspection or to obtain copies except that the public does not have access to the following records: adoptions; sterilization proceedings; grand jury; juvenile; a will deposited for safekeeping; medical or treatment records; mental evaluations in probate court; juror information; social security numbers; transcripts; involuntary commitment; mental health/retardation; presentence investigation reports; DNA records in family court; discovery records unless used by a party; denial of a search warrant; issuance of a search warrant until the date of the return; supplemental financial information with application for an attorney; guardianship proceedings if the respondent is not mentally disabled; records filed regarding the initiation of a criminal proceeding, if the judicial officer does not have probable cause to believe an offense has been committed; civil filings prior to service or disposition; complaint and affidavit filed in abuse prevention proceedings until the defendant has an opportunity for a hearing; records of criminal proceedings involving adult diversion programs; evidence introduced to which the public does not have access; any other record to which public access is prohibited by statute.

The presiding judge by order may grant public access to a case record or seal from public access a record or redact information from a record upon a showing of good cause and exceptional circumstances. Affected parties have a right to notice and a hearing before such order is issued, except for temporary orders. To the extent possible, physical case records that are not public, must be segregated from records to which the public has access. Judicial branch records kept in electronic form must be designated as open or closed in whole or in part. The rules should not be construed to permit online access to any case record. VRCP 5, VRCRP 49 and VRPP 5 require parties to redact social security numbers from any papers they file unless the court has requested the number.

In June 2002, the court approved the Rules Governing Dissemination of Electronic Case Records which provides that except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records. The rule permits access to docket-type information from case management databases and compilation prepared by the court system, with the exception of social security numbers, street addresses, telephone numbers, and personal identification numbers, including financial account numbers and driver's license numbers.

**Washington**

Washington's Judicial Information System Data Dissemination Policy governs access to records in the statewide Judicial Information system (JIS), a case management database. It provides that direct downloading of the database is prohibited except for the index items. Privacy protections accorded by the Legislature to records held by other state agencies are to be applied to requests for computerized information from court records, unless admitted in the record of a judicial proceeding, or otherwise made a part of a file in such proceeding, so that the court computer records will not be used to circumvent such protections. Access is not permitted to effectuate lists of individuals for commercial purposes or to facilitate profit expecting activity. Electronic

records are to be made available on a case-by-case basis and a court-by-court basis. All access to JIS information is subject to the availability of data, specificity of the request, potential for infringement of personal privacy created by release, and potential disruption of the internal ongoing business of the courts. Although, it provides that compiled reports are generally not disseminated if they contain information which permits a person, other than a judicial officer or attorney, to be identified as an individual, this section of the policy has been informally abrogated and will be formally superseded if GR 31, described below, is adopted. The privacy and confidentiality policies are as follows:
records that are sealed, exempted or otherwise restricted by law or court rule may not be released except by court order and confidential information regarding individual litigants, witnesses, or jurors that is collected for internal administrative operations of the courts will not be disseminated, including, but not limited to, credit card and PIN numbers, social security numbers, residential addresses and phone numbers.

General Rule 22 governs public access to family law records, whether maintained in paper or electronic form. The rule requires the parties to record personal identifiers including social security numbers, driver's license numbers, telephone numbers, and a minor's date of birth on a Confidential Information Form. Similarly, parties must attach a Financial Source Document Cover Sheet to certain financial records which are then automatically sealed by the court. Financial source documents include income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other similar records.[24]

Washington's Judicial Information System Committee has proposed a new rule, General Rule 31, which covers access to court (i.e., case, but not administrative) records regardless of form. It would generally place no limits on internet access to non-confidential court records. Parties must refrain from using , or must redact, the following personal identifiers from pleadings filed electronically or on paper - social security numbers (use last 4 digits if necessary) names of minor children (use initials) and financial account numbers (last 4 digits only). Compliance rests solely with the parties and attorneys. The rule would allow for bulk distributions, but bans commercial solicitation. The rule also allows access to closed records by public purpose agencies for scholarly, governmental or research purposes where the identification of individuals is ancillary to the purpose of the inquiry. On October 7, 2004, the Washington Supreme Court will consider GR 31 for adoption. If it is adopted, it will supersede much of the Data Dissemination Policy.

**Wisconsin**
In April 2003, the Wisconsin courts released an internet access policy for case management information on individual cases. The Policy on Disclosure of Public Information Over the Internet permits free remote access to non-confidential case documents. The following records are not available on the internet: closed records that would not otherwise be accessible by law because of specific statutory exceptions such as juvenile court records, guardianship proceedings, and other such case types or records; an expunged criminal conviction (court not responsible for access prior to expunction); the "day" from the date of birth field for non-

[24] See Appendix C for a copy of Washington's Confidential Information Form and Financial Source Document Cover Sheet.

criminal cases; the driver's license number in traffic cases; and the "additional text" or data fields that often contain the names of victims, witnesses and jurors.

The policy provides a disclaimer regarding updates or corrections and states that the WCCA is not responsible for notifying prior requesters of updates. The WCCA Oversight Committee is currently charged with evaluating whether to provide access to electronically filed, scanned, or imaged documents.

## VI. Recommendations

After discussing the work of the Committee, examining the federal and state court remote access policies, reviewing the relevant Texas statutes, and considering the public input and privacy concerns, the Council adopted the following recommendations:

1. **Sensitive/Confidential Data Form. The Supreme Court should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.**

   - The form should include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child.

   - Unless otherwise ordered by the court, any party filing a pleading or other document with the court should not include any sensitive data in such pleading or document, whether filed on paper on in electronic form, regardless of the person to whom the sensitive data relates.

   - Unless otherwise ordered by a court, if reference to any sensitive data is necessary in a pleading or other case record filed with the court, the filing party should refer to that sensitive data as follows: if a social security number or financial account number of an individual must be included in a case record, only the last four digits should be used; if the involvement of a minor child must be mentioned in a case record, only that child's initials should be used; and if a date of birth must be included in a case record, only the month and year should be used. However, the Committee recommends further study regarding the reference to a date of birth or to the name of a minor child.

   - The responsibility for omitting or redacting from those documents filed with the court the sensitive data identified above should rest solely with counsel

and the filing party. The court or court clerk should have no obligation to review each pleading or other filed document for compliance.

- Unless otherwise ordered by the court, the form should not be accessible to the general public either remotely or at the courthouse.

- Unless otherwise ordered by the court, the parties should be required to copy one another with the form.

2. **Remote Access Policy.[25] The policy treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:** ***(1) Court-Created Records.*** Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.[26]

***(2) Case Records other than Court-Created Records.*** Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.[27]

***(3) Specific Types of Records*** Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:

**(a)** Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;

**(b)** Pretrial bail or presentence investigation reports;

**(c)** Statements of reasons or defendant stipulations, including any attachments thereto; and

**(d)** income tax returns

***(4) Family Code Proceedings.*** Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-

[25] See Appendix D for a copy of the Council's Public Access to Case Records Draft Rule. Also note, as discussed in Judge Spencer's cover letter to this report, the Committee submitted two alternative approaches to the Council regarding remote access – the Council adopted the approach as detailed in Recommendation No. 2 and rejected the alternative that any court record otherwise open at the courthouse may be published on the internet.

[26] The Council acknowledges that some court orders are required by law to contain some of those personal identifiers deemed confidential by this Committee (e.g., divorce decrees must contain a social security number). However, the Council leaves the decision as to how to handle those situations to the Texas Supreme Court, local administrative judge, or individual judge.

[27] The parameters of the system need to be defined. The Committee generally favored the subscriber-agreement system implemented in Tarrant County, but would not mandate that a user fee be charged.

created case records, are extremely sensitive and should be excluded from remote access by the general public.[28]

3. **The Texas Judicial Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While some members recommend that access to paper documents and electronic documents be the same, they acknowledge that there may be records (e.g., medical, psychological and psychiatric reports, tax returns, and defendant stipulations) or proceedings (e.g., child custody disputes, adoption or divorce proceedings) that are not appropriate for internet publication and should therefore be made confidential both at the courthouse and on the internet.[29] The committee should examine and make recommendations to protect victims of sexual assault, domestic violence, stalking, or other such victims from being identified and located by use of the information contained in public court records.**

4. **The Texas Judicial Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.**

The Council is confident that with the implementation of the recommendations outlined above, the public's trust, confidence, and use of the court system will continue to thrive. Likewise, with the implementation of a confidential Sensitive Data Form, the public safety concerns associated with identify theft and other improper motives can be minimized while the integrity of the judicial system is preserved.

[28] This provision recognizes the personal nature of those disputes involving children, marriages, and parental rights and restricts remote access to such proceedings by the general public.

[29] The Committee noted the publicity recently encountered by Republican candidate Jack Ryan of Illinois who dropped out of the U.S. Senate race after unsealed divorce and child custody records revealed unfavorable allegations.

# Appendix A

## *Minutes of Meetings*

December 11, 2003
February 25, 2004
April, 27, 2004
May 13, 2004
June 16, 2004
July 13, 2004

# TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 936-2423
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

CHAIR:
HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.


## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

December 11, 2003
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

### COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:30 a.m. on December 11, 2003 in the Supreme Court Courtroom in the Supreme Court Building.

### ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| Charles Bacarisse | District Clerk, Harris County |
| Wanda Garner Cash | President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun |
| David Gavin | Assistant Chief of Administration, Crime Records Division, Department of Public Safety |
| Allen Gilbert | Judge, San Angelo Municipal Court |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Thomas R. Phillips | Chief Justice, Supreme Court of Texas |
| Sherry Radack | Chief Justice, 1st Court of Appeals |
| Tony Reese | Professor, University of Texas School of Law |
| Dianne Wilson | County Clerk, Fort Bend County |
| Sharolyn P. Wood | Judge, 127th Judicial District Court |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Orlinda Naranjo.

With a quorum established, the Committee on Public Access to Court Records took the following action.

Judge Spencer welcomed the Committee members and provided an overview of the Committee's charge.

Ms. Kilgo then summarized the issue for the Committee, describing concerns associated with the recent use of the internet to distribute court documents and records.

Judge Spencer addressed the issues faced by the probate courts in Bexar County where court records often include bank account numbers, social security numbers, detailed property records, guardianship record information, and medical data.

Mr. Bacarisse described the types of court records available on the internet for Harris County and the resources required to make those records available online. The Harris County District Clerk's office images all new court documents and continues to image backfiles for internet availability. Ms. Wilson described the availability of court records in Fort Bend County where all of the fifteen million documents dating back to the 1830s are published online and on CD ROM.

Committee members questioned, "Why court records should be available on the internet?" Potential reasons discussed included, judicial accountability, empirical research, cost and space savings in the clerk's office, and public expectation and demand.

Committee members then addressed the potential harms resulting from unlimited online access to court records including identity theft; the dissemination of sensitive personal and medical information; decreases in jury participation; the use of court information by data collection and sales companies; the use of court information by industry for questionable purposes, such as insurance sales or employment decisions; and the threat of "court publication" as a litigation tactic, which could cause a potential litigant to avoid the court system as a means of recourse.

The Committee generally discussed information that might be withheld from online court records and how it could be withheld. Should there be different levels of access to online court records? Should the documents available at the courthouse differ from those available online? What information should be withheld both online and at the courthouse? How does a user fee for online access limit the problems associated with online access to court records? Should litigants bear any of the responsibility for assuring that sensitive information does not become available online? What potential burdens exist for court clerks if required to redact portions of documents rather than entire documents?

After lengthy discussion, the Committee decided to meet again in February of 2004. The members requested that a representative of law enforcement be available at the next meeting.

**ADJOURNMENT**

There being no further business before the Committee, the meeting was adjourned at approximately 12:15 p.m.

Judge Polly Jackson Spencer
Chair

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## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

February 25, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

### COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:35 a.m. on February 25, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

### ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| Lance Byrd | President & CEO, Sendero Energy, Inc. |
| Wanda Garner Cash | President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun |
| Robert Duncan | Senator, Lubbock |
| David Gavin | Assistant Chief of Administration, Crime Records Division, Department of Public Safety |
| Allen Gilbert | Judge, San Angelo Municipal Court |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Orlinda Naranjo | Judge, County Court at Law #2, Travis County |
| Thomas R. Phillips | Chief Justice, Supreme Court of Texas |
| Sherry Radack | Chief Justice, 1st Court of Appeals |
| Tony Reese | Professor, University of Texas School of Law |
| Dianne Wilson | County Clerk, Fort Bend County |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were, Mr. Charles Bacarisse, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Sharolyn P. Wood.

Judge John J. Specia (225th District Court, Bexar County), Judge Lamar McCorkle (133rd District Court, Harris County), and Tom Wilder (District Clerk, Tarrant County) participated via conference phone. Paul Billingsly (Director, Technical Services Bureau, Harris County District Clerk's Office) and James Brubaker, (Commander of Narcotics, Department of Public Safety) testified as resource witnesses.

With a quorum established, the Committee on Public Access to Court Records took the following actions.

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the December 11, 2003 Committee meeting. After a motion and a vote, the Committee adopted the minutes.

Judge Specia described the PACER system used by federal bankruptcy courts, and expressed his concern over the possibility of family case information on the internet.

Judge McCorkle discussed some concerns regarding case records on the internet, for example, property inventories in divorce cases, which may potentially send litigants to private dispute resolution. Judge McCorkle expressed support for a standard form that might be used to automatically seal certain confidential information.

Tom Wilder described the development and functionality of the dial-in information system used in Tarrant County. The system is a fee for service arrangement allowing access to scanned case files. Judges have the power to make any document "unavailable" for the online service, although this designation is rarely used by the judges. Out of state subscribers do include information vendors.

Paul Billingsly then presented and described Harris County's "E-Clerk" system, which is a fee-based court information system that makes imaged court documents available via the internet. The system uses a cover sheet, does not include family law orders, and does not allow text searches.

**Bulk Dissemination**

The Committee discussed the value of the information for legitimate academic aggregate research. Senator Duncan suggested that privacy concerns of the litigants should outweigh any research benefits. Professor Young suggested that there should be an exception for academic research. Judge Spencer called for a policy regarding bulk dissemination of court case information. Ms. Wilson noted a lawsuit against her office, which required her office to provide an enormous number of cases.

The members questioned the extent to which information vendors already have scanned documents from the courthouse. Doctor Young suggested shifting liability for misused information to the vendor to curtail the availability of scanned court documents.

The members discussed the possibility of a lag time from filing to availability on the internet for certain case types to subvert any negative effects of widespread dissemination. The committee discussed a bill concealing protective orders for 48 hours, which was passed during the 78th legislative session.

**A Prospective or Retrospective Rule**
Judge Spencer stated that any rule adopted by the Committee should apply only to documents filed after the enactment of the rule because of the exorbitant redaction costs associated with a retrospective rule. Mr. Gavin stated that the Committee should consider a transition strategy when implementing the new rule.

**NEXT MEETING**
After the lengthy discussion, the Committee decided to meet again in April or May of 2004.

**ADJOURNMENT**
There being no further business before the Committee, the meeting was adjourned at approximately 1:20 p.m.

Polly Jackson Spencer

Judge Polly Jackson Spencer
Chair

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Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.


## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

April 27, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

### COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:40 a.m. on April 27, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

### ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| Charles Baccarise | District Clerk, Harris County |
| Wanda Garner Cash | President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun |
| Allen Gilbert | Judge, San Angelo Municipal Court |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Ann Manning | Attorney at Law, Lubbock |
| Orlinda Naranjo | Judge, County Court at Law #2, Travis County |
| Thomas R. Phillips | Chief Justice, Supreme Court of Texas |
| Tony Reese | Professor, University of Texas School of Law |
| Sharolyn P. Wood | Judge, 127th Judicial District Court |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Mr. David Gavin, Representative Will Hartnett, Chief Justice Sherry Radack, and Ms. Dianne Wilson.

Judge Juanita Vasquez-Gardner (399th District Court, Bexar County) attended as an invited resource witness. Marc Hamlin (District Clerk, Brazos County and former president of the District and County Clerks Association) and Michael Grenet (citizen of Bryan, Texas) registered as witnesses and testified before the Committee.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the February 25, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Vasquez-Gardner testified before the Committee as follows: she expressed her concerns regarding the availability of personal identifiers on the internet and at the courthouse; noted that while redaction might provide some protection, in many instances it will not provide enough protection; and questioned how the Committee might protect sexual assault victims or individuals who undergo drug treatment.

Mr. Grenet testified before the Committee as follows: he expressed his personal concerns as a former victim of identity theft and recent divorcee, stating that he feels vulnerable because of the amount of personal information that is available to the public with the internet publication of divorce cases by his district clerk.

Professor Reese explained the draft rule submitted to the Committee by him and Professor Young. Professor Reese pointed out that the draft rule allows the Committee to identify individual items to be placed on a confidential data form; to identify a list of documents that would be unavailable on the internet; and to identify classes of cases that would be unavailable on the internet. Professor Reese reminded the Committee that the draft rule is currently written to address access by the public and thus would not prohibit differential access to the parties.

Mr. Baccarise reminded the Committee that the clerks should not be required to make judgment calls regarding the availability of information on the internet. The Committee discussed placing the burden of excluding confidential data from court filings on the parties and their attorneys.

Mr. Hamlin testified before the Committee as follows: he stated the Committees should establish a prospective rule because a retrospective rule would place a tremendous burden on clerks' offices; he noted that the clerk cannot legally certify a document that has been redacted; and he expressed his opinion that because this information is readily available from other sources, the courts should have little concern that increased internet access to court records is significantly adding to the availability of sensitive information.

Judge Wood noted that the reason for keeping court records is to facilitate court business. She expressed her concern that making court documents available on the internet may shut down the availability of those documents at the courthouse. She suggested that the Committee limit

internet access to the official court minutes and general docket information, including the calendar, index and register of actions. She also suggested that the Committee consider limiting internet access to the pleadings and other such documents to the parties and their attorneys.

Judge Wood made a motion that only the court minutes (documents signed by the judge), docket, calendar, and case index (or register of actions) be available by remote electronic means such as through the internet. (The pleadings and case files would not be publicly available online.) That motion failed with 3 yes, 5 no, and 4 present not voting.

Mr. Baccarise made a motion to adopt the draft rule as presented as a working document to be used as a foundation to outline more specific policies as the Committee's work progresses. That motion was adopted by a non-record vote.

**NEXT MEETING**
The Committee will meet again in early May or early June.

**ADJOURNMENT**
There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.

Judge Polly Jackson Spencer
Chair

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Presiding Judge, Court of Criminal Appeals

DIRECTOR:
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## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

May 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

### COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:50 a.m. on May 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

### ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| David Gavin | Assistant Chief of Administration, Crime Records Division, Department of Public Safety |
| Allen Gilbert | Judge, San Angelo Municipal Court |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Ann Manning | Attorney at Law, Lubbock |
| Orlinda Naranjo | Judge, County Court at Law #2, Travis County |
| Thomas R. Phillips | Chief Justice, Supreme Court of Texas |
| Sherry Radack | Chief Justice, 1st Court of Appeals |
| Tony Reese | Professor, University of Texas School of Law |
| Ms. Dianne Wilson | County Clerk, Fort Bend County |
| Sharolyn P. Wood | Judge, 127th Judicial District Court |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were: Mr. Charles Baccarise, Mr. Lance Byrd, Ms. Wanda Garner Cash, Senator Robert Duncan, and Representative Will Hartnett.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the April 27, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Upon proper motion and discussion, the Committee adopted a motion to generally support the implementation of a "Sensitive/Confidential Data Form" which would govern both paper and electronic filings such that the form would not be accessible to the public either remotely or at the courthouse. The confidential data form would include: social security numbers; bank account numbers, credit card numbers, other financial account numbers, and PIN numbers; driver's license numbers; date of birth; government-issued identification numbers (except for state bar numbers); a victim's address and phone number (with the understanding that the definition of "victim" needs to be clarified); and the name of a minor child.

Upon proper motion and discussion, the Committee adopted a related motion that "without court permission" be added to the language of the first motion and that the rule incorporate the requirement that parties copy one another with the form.

Ms. Wilson suggested that the Committee define the word "remote" to refer to the internet as we know it today. The term should not refer to court personnel at remote locations. Professor Reese reminded the Committee that the proposed rules apply only to the public.

Judge Naranjo expressed her concern about the distinction between information available at the courthouse and information available online with the development of a two-tier system of access, and stated that any protections should be implemented at the courthouse.

Ms. Wilson stated that in four years of having all case documents online she has never received complaints from the public regarding internet accessible information other than those regarding personal identifiers and financial account information.

Upon proper motion and discussion, the Committee adopted a motion that certain specific types of *records*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion that the case records relating to certain *proceedings*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion to recommend to the Legislature that certain specific types of *records*, to be determined by this Committee, Not be made available to the public either remotely or at the courthouse on a prospective basis.

The membership briefly discussed bulk distributions of information, but tabled the discussion until future meetings.

**NEXT MEETING**
The Committee will meet again in June.

**ADJOURNMENT**
There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.

Judge Polly Jackson Spencer
Chair

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## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

June 16, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

**COMMENCEMENT OF MEETING**

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on June 16, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

**ATTENDANCE OF MEMBERS**

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| Mr. Charles Baccarise | District Clerk, Harris County |
| Ms. Wanda Garner Cash | President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun |
| David Gavin | Assistant Chief of Administration, Crime Records Division, Department of Public Safety |
| Allen Gilbert | Judge, San Angelo Municipal Court |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Ann Manning | Attorney at Law, Lubbock |
| Orlinda Naranjo | Judge, County Court at Law #2, Travis County |
| Thomas R. Phillips | Chief Justice, Supreme Court of Texas |
| Sherry Radack | Chief Justice, 1st Court of Appeals |
| Tony Reese | Professor, University of Texas School of Law |
| Sharolyn P. Wood | Judge, 127th Judicial District Court |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett and Ms. Dianne Wilson. Also attending were Mr. Thomas Wilder, Tarrant Councy District Clerk and Ms. Monica Latin, Sedona Conference.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the May 13, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer reviewed the Committee's progress from the previous four meetings and asked the committee to consider several proposed motions after discussion.

Judge Wood discussed a draft rule she developed with Chief Justice Radack. Specific provisions included public access to court created documents and calendars; greater access for the litigant if possible; access to be made available only through case number searches rather than through "Google" searches; and a prohibition on bulk access.

Committee members discussed the possibility of requiring local courts to develop a plan to be approved by the Supreme Court before making court records available remotely. Mr. Baccarise stated that the counties are already required to submit such plans to the state library. Chief Justice Phillips did not think that the Supreme Court would want to review remote access plans for every county.

Judge Wood suggested that the Committee send alternative proposals to the Supreme Court Rules Committee for consideration. Such an approach would allow this Committee to provide valuable input to the Rules Committee while keeping the issue open for discussion. Judge Spencer outlined three public remote access options already discussed by the committee: (1) remote access only to docket-type information; (2) partial remote access with an exclusion list: and (3) unlimited remote access to otherwise open records. All options would include the confidential data form with the burden of compliance would be on the filing party.

The committee then discussed the burden of compliance on the filing party. The committee also discussed the use of a filing cover sheet to be completed by the filing party for determining the nature of a court document and its contents; the role of the court regarding enforcement and the role of the clerks when an error is made.

Committee members discussed the "practical obscurity" attained when a subscriber system is in place. Mr. Wilder (Tarrant County District Clerk) and Mr. Baccarise discussed the differences between a subscriber system as used in Tarrant county, which requires all users to register with the clerk's office, and a non-subscriber system like that used in Harris county, which only tracks users for billing purposes.

Judge Gilbert and Justice Goodwin agreed to develop a list of potentially sensitive criminal case information.

Judge Spencer then asked the Committee members to be ready to vote on substantive motions at the next meeting.

**NEXT MEETING**
The Committee will meet again on June 29.

**ADJOURNMENT**
There being no further business before the Committee, the meeting was adjourned at approximately 2:20 p.m.

Judge Polly Jackson Spencer
Chair

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Presiding Judge, Court of Criminal Appeals

DIRECTOR:
MS. ELIZABETH KILGO, J.D.


## COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

July 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

**COMMENCEMENT OF MEETING**

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on July 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

**ATTENDANCE OF MEMBERS**

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

| | |
|---|---|
| Chair, Polly Jackson Spencer | Judge, Bexar County, Probate Court No. 1 |
| Mr. Lance Byrd | President & CEO, Sendero Energy, Inc. |
| Ms. Wanda Garner Cash | President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun |
| David Gavin | Assistant Chief of Administration, Crime Records Division, Department of Public Safety |
| Melissa Goodwin | Justice of the Peace, Travis County, Pct. 3 |
| Ann Manning | Attorney at Law, Lubbock |
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| Ms. Dianne Wilson | County Clerk, Fort Bend County |
| Sharolyn P. Wood | Judge, 127th Judicial District Court |
| Ernie Young | Professor, University of Texas School of Law |

Members not in attendance were: Mr. Charles Baccarise, Senator Robert Duncan, Representative Will Hartnett and Mr. Tony Reese. Judge Allen Gilbert attended via conference call. Also attending was Mr. Thomas Wilder, Tarrant County District Clerk.

With a quorum established, the Committee on Public Access to Court Records took the following actions.

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the June 16, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer informed the members that this would be the last meeting of the Committee before the August Texas Judicial Council meeting and that the Committee should adopt its final recommendations for presentation at the August Council meeting. Judge Spencer thanked the members for their time and their dedication.

Judge Spencer suggested that the Committee adopt alternative proposals for presentation to the Council given the divergent viewpoints of Committee members.

Ms. Diane Wilson reminded the Committee that any requirement on the court clerk to redact information from a part of a court document would create significant burdens on the clerk's office. To address her concerns, upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.5(f) such that the provision would read "If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed."

Mr. David Gavin asked whether access to the sensitive data form would be available to criminal justice agencies for criminal justice purposes under the proposed rule. Upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.3 to state that the rule does not limit access to case records by criminal justice agencies for criminal justice purposes.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Supreme Court require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Texas Judicial Council appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The committee should report to the Council prior to the 80th Regular Legislative Session.

Upon proper motion and discussion, the Committee adopted a motion to submit the following two alternative recommendations to the full Council.

Alternative I: Open Remote Access. This approach treats remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. This approach treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:

*(1) Court-Created Records.* Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.

*(2) Case Records other than Court-Created Records.* Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.

*(3) Specific Types of Records.* Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:

(a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records
(b) Pretrial bail or presentence investigation reports;
(c) Statements of reasons or defendant stipulations, including any attachments thereto; and
(d) Income tax returns.

*(4) Family Code Proceedings.* Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, are extremely sensitive and should be excluded from *remote access* by the general public.

Upon proper motion and discussion, the Committee adopted a motion to recommend to the Council that a new committee be formed to determine whether additional case records or proceedings should be closed at the courthouse. While some members felt that public access to paper documents and electronic documents should be treated the same, they acknowledged that there may be some records or proceedings that are not appropriate for internet publication.

**NEXT MEETING**

The Committee will present its recommendations to the full Texas Judicial Council in August.

**ADJOURNMENT**

There being no further business before the Committee, the meeting was adjourned at approximately 3:00 p.m.

Judge Polly Jackson Spencer
Chair

# Appendix B

*Confidential Court Case Records in Texas*

# *Current Statutory Protections/Requirements in Texas*

***a. Permanent Protection from Public Access***

Abortion §33.003 Family Code

Accident Reports §62.0132 Gov't Code – except to a person who can provide two or more of the: date, the street, or the name of any person involved in the accident

Adoption §162.021. & §162.022 - The records concerning a child maintained by the district clerk *after* entry of an order of adoption are confidential.

Arrest Warrant & Affidavit Article 15.26 Code of Criminal Procedure – public information, beginning immediately when the warrant is executed.

Biometric Identifier §559.001 Gov't Code - defined as a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A court or clerk may not disclose such identifier unless: the individual consents, disclosure is permitted or required by statute, or is by or for law enforcement.

Crime Victim Impact Statement §552.1325 Gov't Code - the name, social security number, address, and telephone number of a crime victim; and any other information that would identify the crime victim.

Criminal History Records of Professional Guardians §411.1386 Gov't Code & §698 Probate Code.

E-Mail Addresses §552.137 Gov't Code – for members of the public provided for the purpose of communicating electronically with a governmental body

Emergency Application for Funeral/Burial Expenses & Access to Personal Property Chapter 5, §§ 111 & 112 Probate Code - includes the name address social security and interest of the applicant

Information in Application for Marriage License. §552.141 Gov't Code - social security number on a license, application, affidavit

Juries – Grand Article 19.42 Code of Criminal Procedure – personal information including the person's home address, home phone number, social security number, driver's license number; Article 19.34, Code of Criminal Procedure – proceedings in general

Juries - Petit §62.0132 Gov't Code - written questionnaire; Art. 35.29 Code of Criminal Procedure-home address and phone number, social security number, driver's license number

Juvenile Justice Hearings and Records §§54.08 & 58.007 Family Code

Mental Health Proceedings §144.005 Civ. Prac & Rem. Code & §571.015 Health & Safety Code – including civil commitment proceedings Chapter 574 Health & Safety Code

Military Discharge Records §552.140 Gov't Code - on or after September 1, 2003

Motor Vehicle Records §§730.005 & 730.006 Transp. Code – generally protects personal information

Order of Witholding §8.152 Family Code On request, the court may exclude the obligee's *address and social security number* if the oblige or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject.

Pretrial Request for Advance Payment of Expenses in Death Penalty Case Art. 26.052 & 11.071 Code of Criminal Procedure - to investigate potential defenses

Protective Orders §85.007 Family Code - On request, the court may exclude the *address and telephone number* of a person protected; the *place of employment* or business of a person protected; the *child-care facility or school of a child protected* by the order attends or in which the child resides.

Wills Deposited for Safekeeping Probate Code, Chapter 4, § 71(d)

Victims of Sex Offenses Article 57.02 Code of Criminal Procedure - a victim may elect to use a pseudonym for all public purposes

***b. Temporary Protection from Public Access***

Birth Records §552.115 Gov't Code – until the 75th anniversary of the date of birth
Death Records §552.115 Gov't Code until the 25th anniversary of the death
Dissolution of Marriage Pleadings §6.410 & §102.0086 Family Code – (Harris County) until after the date of service of citation or the 31st day after the date the suit was filed.
Protective Orders/Temporary Ex Parte Orders Applications §82.010 Family Code – (Harris County) until after the date of service of notice of the application or the hearing date/until after the date the respondent is informed of the court's order

***c. Documents on which a social security number, driver's license number name, address, phone, name of employer, or birth date is required***

Final Orders in SAPCR Suits §105.006 Family Code- other than termination or adoption orders
Child Support Lien Notice §157.313
Child Support Petition for Modification §159.311
Suspension of License Petition §232.005
Name Change §45.102 Family Code - or must provide a reason for exclusion

***d. Documents on which a social security number may be excluded***

Deeds, Mortgages and Deeds of Trust §11.008 Property Code - executed on or after January 1, 2004 are *not* required to contain a social security number or a driver license number. The Code permits the filer to delete the information prior to filing.

# Appendix C

*Washington's Confidential Information Form*
*and*
*Financial Source Document Cover Sheet*

# CONFIDENTIAL INFORMATION FORM (INFO)

| County: | Cause Number: | **Do not file in a public access file.** |
|---|---|---|

**COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT**

☐ Divorce/Separation/Invalidity/Nonparental Custody/Paternity/Modifications ☐ Other
☐ Domestic Violence ☐ Antiharassment ☐ Information Change (Check if you are updating information)

☐ **A restraining order or protection order is in effect protecting ☐ the petitioner ☐ the respondent ☐ the children.**

☐ **The health, safety, or liberty of a party or child would be jeopardized by disclosure of address information because:** _____

**The following information about the parties is required in all cases:**
(Use the Addendum To Confidential Information Form to list additional parties or children)

| **Petitioner Information** | | | Type or Print only | **Respondent Information** | | |
|---|---|---|---|---|---|---|
| Name (Last, First, Middle) | | | | Name (Last, First, Middle) | | |
| Race | Sex | Birthdate | | Race | Sex | Birthdate |
| Driver's Lic. or Identicard (# and State) | | | | Driver's Lic. or Identicard (# and State), (or, if unavailable, residential address) | | |
| Mailing Address (P.O. Box/Street, City, State, Zip) | | | | Mailing Address (P.O. Box/Street, City, State, Zip) | | |
| Relationship to Child(ren) | | | | Relationship to Child(ren) | | |

**The following information is required if there are children involved in the proceeding.**
(Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment.)

| |
|---|
| 1) Child's Name (Last, First, Middle) |
| Child's Race/Sex/Birthdate |
| Child's Soc. Sec. No. (If required) |
| Child's Present Address or Whereabouts |
| 2) Child's Name (Last, First, Middle) |
| Child's Race/Sex/Birthdate |
| Child's Soc. Sec. No. (If required) |
| Child's Present Address or Whereabouts |
| List the names and present addresses of the persons with whom the child(ren) lived during the last five years: |
| |

| |
|---|
| List the names and present addresses of any person besides you and the respondent who has physical custody of, or claims rights of custody or visitation with, the child(ren): |
| |
| |

| **Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:** | |
|---|---|
| **Petitioner's Information** | **Respondent's Information** |
| Soc. Sec. No.: | Soc. Sec. No.: |
| Residential Address (Street, City, State, Zip) | Residential Address (Street, City, State, Zip) |
| Telephone No.: ( ) | Telephone No.: ( ) |
| Employer: | Employer: |
| Empl. Address: | Empl. Address: |
| Empl. Phone No.: ( ) | Empl. Phone No.: ( ) |
| **For Nonparental Custody Petitions only,** list other Adults in Petitioner(s) household (Name/DOB): | |

Additional information:_____

_____

_____

☐ Addendum To Confidential Information Form is attached.

I certify under penalty of perjury under the laws of the state of Washington that the above information is true and accurate concerning myself and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because _____

_____.

Signed on _____ (Date) at _____ (City and State).

_____

Petitioner/Respondent

# ADDENDUM TO CONFIDENTIAL INFORMATION FORM (AD)

| County: | Cause Number: | **Do not file in a public access file.** |
|---|---|---|
| **COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT** | | |

**The following information about additional parties is required in all cases.**

Type or Print only

| **Additional Petitioner Information** | **Additional Respondent Information** |
|---|---|
| Name (Last, First, Middle) | Name (Last, first, Middle) |
| Race / Sex / Birthdate | Race / Sex / Birthdate |
| Drivers Lic. or Identicard (# and State) | Drivers Lic. or Identicard (# and State), (or, if unavailable, residential address) |
| Mailing Address (P.O. Box/Street, City, State, Zip) | Mailing Address (P.O. Box/Street, City, State, Zip) |
| Relationship to Child(ren) | Relationship to Child(ren) |

**The following information is required if there are additional children involved in the proceeding**
(Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment).

| |
|---|
| 3) Child's Name (Last, First, Middle) |
| Child's Race/Sex/Birthdate |
| Child's Soc. Sec. No. (If required) |
| Child's Present Address or Whereabouts |
| 4) Child's Name (Last, First, Middle) |
| Child's Race/Sex/Birthdate |
| Child's Soc. Sec. No. (If required) |
| Child's Present Address or Whereabouts |

**Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:**

| **Additional Petitioner Information** | **Additional Respondent Information** |
|---|---|
| Soc. Sec. No.: | Soc. Sec. No.: |
| Residential Address (Street, City, State, Zip) | Residential Address (Street, City, State, Zip) |
| Telephone No.: | Telephone No.: |
| Employer: | Employer: |
| Empl. Address: | Empl. Address: |
| Empl. Phone No.: | Empl. Phone No.: |

SUPERIOR COURT OF WASHINGTON
COUNTY OF

| | |
|---|---|
| In re:<br><br>and Petitioner(s),<br><br>Respondent(s). | NO.<br><br>SEALED FINANCIAL SOURCE DOCUMENTS<br>(SEALFN)<br>**CLERK'S ACTION REQUIRED** |

## SEALED FINANCIAL SOURCE DOCUMENTS

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

- ☐ Income Tax records.
  Period Covered:
- ☐ Bank statements.
  Period Covered:
- ☐ Pay Stubs.
  Period Covered:
- ☐ Credit Card Statements.
  Period Covered:
- ☐ Other:

Submitted by:

_____

**NOTICE: The other party will have access to these financial source documents. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.**

# Appendix D

## *Public Access to Case Records Draft Rule*

# *Public Access to Case Records Draft Rule*

## RULES OF JUDICIAL ADMINISTRATION

## RULE 14. PUBLIC ACCESS TO CASE RECORDS

**14.1 Policy.** The purpose of this Rule is to facilitate public access to case information while protecting personal safety and privacy interests. In addition to the paper-based record receipt and retention process, courts are now equipped to create, use and maintain case records in electronic form. This Rule informs and instructs the courts, practitioners, and the public regarding access to case records regardless of the physical form of the record.

**14.2 Definitions.** In this Rule:

**(a)** *Access* means the ability to view or obtain a copy of a case record.

**(b)** *Bulk distribution* means the distribution of all, or a significant subset, of the information in multiple case records, as is, and without modification or compilation.

**(c)** *Case record* means a record of any nature created or maintained by, or filed by any person with, a court in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

**(d)** *Compiled information* means information that is derived from the selection, aggregation, or reformulation by the court of some of the information from more than one individual case record.

**(e)** *Court* means any court created by the Constitution or laws of the State of Texas including the Texas Supreme Court, the Court of Criminal Appeals, the intermediate courts of appeals, the district courts, the constitutional and statutory county courts at law, the statutory probate courts, justice of the peace and small claims courts, and municipal courts.

**(f)** *Court-Created Record* means a record of any nature created by a court or court clerk in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the

record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

**(g)** A case record is in *electronic form* if that case record is in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

**(h)** *Remote access* means the ability to electronically search, inspect, or copy information in a court record by a member of the general public without the need to physically visit a court facility.

**14.3 Authority and Applicability.**

**(a)** This Rule is adopted under the authority granted to the Supreme Court of Texas in the Texas Constitution, Article V, Section 31(a) and (c), as well as Texas Government Code Section 552.0035(a).

**(b)** This Rule governs access by the general public to all case records. This Rule does not limit access to case records in any given action or proceeding by a party to that action or proceeding or by the attorney of such a party. This Rule does not limit access to case records by criminal justice agencies for criminal justice purposes, or other persons or entities that are entitled to access by law or court order.

**(c)** This rule does not apply to court records that are filed with the county clerk and are unrelated to the court's adjudicative functions including land title records, vital statistics, birth records, naturalization records, voter records and other such recorded instruments.

**(d)** This Rule does not require any court or clerk of court to redact, or restrict information that was otherwise public in, any case record created before the effective date of this Rule.

**14.4 Public Access to Case Records.**

**(a)** ***Generally.*** Case records other than those covered by Rule 14.5 are open to the general public for viewing and copying during the regular business hours established by the court. But this Rule does not itself require a court or court clerk to:

(1) create a case record, other than to print information stored in a computer;

(2) retain a case record for a specific period of time beyond that time otherwise required by law; or

(3) respond to or comply with a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in

Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) ***Remote Access to Case Records.*** A court or court clerk may, but is not required to, provide to the general public remote access to case records in accordance with the provisions of this Rule. A court or court clerk that chooses to provide such remote access must employ appropriate security measures, procedures, devices and software to protect the security and integrity of those records and to prevent unauthorized access to them. The specific case records to which remote access is granted, as well as the specific information that is included, its format, method of dissemination, and any subsequent changes thereto, must comply with the provisions of this Rule.

(c) ***Case-by-Case Basis for Access to Case Records in Electronic Form.*** A court or court clerk may only grant public access to a case record in electronic form when the party requesting access to the case record identifies the case record by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis. The case-by-case limitation does not apply to the index, calendar, docket, or register of actions.

(d) ***Changes in Public Access to Case Records.*** If by court order or operation of law a court or court clerk is required to deny public access to a case record to which the court has previously provided public access, the court or court clerk is not required to take any action with respect to any copy of the case record that was made by any member of the public before public access to the case record became unavailable.

(e) ***Conditions of use.*** A court, or a court clerk with the consent of the judges served by the court clerk, may adopt local rules to provide for the orderly public access to case records consistent with the provisions of this Rule. The local rules may provide for conditions of use for public access to case records, including, without limitation, (1) the user's consent to access the case records only as authorized by the court; (2) the user's consent to not attempt any unauthorized access; and (3) the user's consent to monitoring by the court of all access to its case records. The court adopting such local rules shall provide users with notice of such conditions of use, and obtain users' agreement to comply with them, in any reasonable manner that the court deems appropriate. The court or court clerk establishing such rules may deny access to case records to a member of the public for past failure to comply with any conditions of use provided for in such local rules. The *conditions of use* provisions may not apply to public access to the court-created case records of the court.

(f) ***Inquiry to requestor.*** Except for requests for bulk distribution or access to compiled information as provided in Rule 14.4(h)(1), a person requesting access to a case record may not be asked to disclose the purpose of the request as a condition of obtaining access to the case record. But a court or court clerk may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(c) ***Court Order.*** Any case record containing information excluded from public access by specific court order.

(d) ***Limitation on Remote Access.*** Remote access to the following records or proceedings is limited as follows:

> ***(1) Case Records other than Court-Created Records.*** Remote access by the general public to case records, other than court-created case records, may be granted only through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.
>
> ***(2) Specific Types of Records*** Notwithstanding Rule 14.5(d)(1), the following case records are excluded from remote access by the general public:
>
> > (a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;
> >
> > (b) Pretrial bail or presentence investigation reports;
> >
> > (c) Statements of reasons or defendant stipulations, including any attachments thereto; and
> >
> > (d) income tax returns
>
> ***(3) Family Code Proceedings.*** Notwithstanding Rule 14.5(d)(1), the case records filed as part of any family code proceeding, other than court-created case records, are excluded from remote access by the general public.
>
> ***(4) Procedures.*** Unless otherwise ordered by the court, any party filing with a court any case record that is or that includes a document identified in Rule 14.5(d)(2) or (3) shall at the time of filing notify the court that the filing includes a case record to which access is restricted under this section. Such notification shall occur as provided by local court rule; in the absence of such a rule, the party shall include with the filing a cover sheet identifying the relevant case record. The court or court clerk shall have no obligation to review each case record submitted to it to determine whether it is or includes a document identified in Rule 14.5(d).

(e) ***Sensitive Data Form.*** A Sensitive Data Form, as provided for in Rule 14.6.

(f) ***Public Access to Part of Case Record.*** If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed.

**14.6 Sensitive Data.**

**(a)** The court or court clerk shall maintain, as a case record to which public access is not allowed, a Sensitive Data Form submitted to the court and containing any items of sensitive data. "*Sensitive data*" consists of the following information:

(1) social security numbers;

(2) bank account, credit card, or other financial account number and associated PIN numbers;

(3) driver's license numbers, passport numbers, or similar government-issued identification card numbers, excluding attorney state bar numbers;

(5) date of birth;

(6) the address and phone number of a person who is a crime victim, as defined by Article 56.32, Code of Criminal Procedure, in the proceeding in which the case record is filed or in a related proceeding; and

(7) the name of a minor child.

**(b)(1)** Unless otherwise ordered by the court, any party filing a pleading or any other case record (other than a Sensitive Data Form) with the court shall not include any sensitive data in such pleading or case record, whether filed on paper on in electronic form, regardless of the person to whom the sensitive data relates.

**(2)** Unless otherwise ordered by a court, if reference to any of the following items of sensitive data is necessary in a pleading or any other case record (other than a Sensitive Data Form) filed with the court, the party filing such pleading or case record shall refer to that sensitive data as follows:

(A) **Social Security Numbers.** If the Social Security Number of an individual must be included in a case record, only the last four digits should be used.

(B) **Names of Minor Children.** If the involvement of a minor child must be mentioned in a case record, only that child's initials should be used, unless otherwise necessary.

(C) **Financial Account Numbers.** If financial account numbers must be included in a case record, only the last four digits should be used.

(D) **Date of Birth.** If a date of birth must be included in a case record, only the month and year should be used.

(c) The responsibility for omitting or redacting from case records filed with the court the sensitive data identified in this Rule rests solely with counsel and the party filing the case record. The court or court clerk shall have no obligation to review each pleading or other submitted case record for compliance with this Rule.

**14.7 Disallowing Public Access.** In addition to any other remedy provided by law, any interested person seeking to disallow public access to any case record containing sensitive data or excluded from public access under Rule 14.5, may apply for relief to the court or court clerk of the court in which the case record was originally filed. The court may, upon application by any interested person or on its own motion, disallow public access or remote access to, or order a party to redact, any case record that contains sensitive data in violation of this Rule or that is or includes a document identified in Rule 14.5(d).

**14.8 Sanctions.** A court shall have the authority to impose appropriate sanctions on any party failing to comply with the provisions of Rule 14.5 or Rule 14.6 in a filing with that court.

**14.9 Immunity.** A court, court clerk, or court employee who unintentionally and unknowingly discloses a case record that is exempt from public access or that includes erroneous information is immune from liability for such disclosure. A court, court clerk, or court employee is not liable for inaccurate or untimely information, or for misinterpretation or misuse of the data, included in any case record.

**14.10 Costs for Copies of Case Records.** The cost for a copy of a case record is either:

(1) the cost prescribed by statute, or

(2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the Building and Procurement Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.

**14.11 Contracts with vendors providing information technology services.** If a court or court clerk contracts with a vendor to provide information technology support to gather, store, or provide public access to case records, the contract must require the vendor to comply with the provisions of this Rule. Each contract shall prohibit vendors from making bulk distribution of case records or from disseminating compiled information, except as provided by this Rule. Each contract shall require the vendor to acknowledge that case records remain the property of the court and are subject to the directions and orders of the court with respect to the handling of and public access to the case records, as well as the provisions of this Rule. These requirements are in addition to those otherwise imposed by law. For purposes of this Rule, the term *"vendor"* includes a state, county or local governmental agency that provides information technology services to a court.

**14.12 Requests for Deviations.** A court or court clerk, with the consent of a majority of the judges served by the court clerk, may submit to the Supreme Court of Texas a written request to deviate from this Rule in providing public access to case records. Such request must:

(1) describe in detail the deviation requested;

(2) describe the purpose for the deviation; and

(3) identify the benefits and detriments of the deviation.

Approved deviations from this Rule may be implemented only upon written order by the Supreme Court of Texas.

**Report from Subcommittee on TRCPs 1-14c**
**Disposing of Exhibits and Depositions after Notice by Publication**
**December 21, 2004**

## I. Scope of task.

At its November 12, 2004 meeting, the full Supreme Court Advisory Committee referred to this subcommittee a letter from Charles Bacarisse, Harris County District Clerk, relating to disposal of exhibits and depositions in a civil cases. A copy of the letter is attached as Appendix A. The letter raises two concerns: (1) the "cumbersome, expensive process of notification" by the clerk's office prior to disposing of exhibits and depositions in cases that are final; and (2) "on-going problems of storage of depositions and exhibits," particularly oversized exhibits. The subcommittee was asked by Justice Hecht to report back on the first concern at the January meeting of the Advisory Committee.

## II. Meeting of Subcommittee

The subcommittee met on December 14, 2004 after soliciting further information from the Harris County District Clerk's office and after some initial research with the help of Rules Attorney Lisa Hobbs. The subcommittee members each brought a unique perspective to the issues of disposition of exhibits and depositions: Bonnie Wolbrueck, District Clerk of Williamson County, one of the fastest growing counties in the state; Stephen Yelenosky, newly-elected district judge of Travis County; Robert Valadez, a trial lawyer in San Antonio who practices in both state and federal courts; and Pamela Baron, an appellate specialist. Rules Attorney Lisa Hobbs also attended the meeting.

The subcommittee members attending the meeting were unanimous in supporting the proposals made in this report. All recommendations relate only to civil cases.

## III. Notice Issue

**A. Current Rules.** Currently, the provisions governing disposition of exhibits and depositions by clerks in civil cases is governed by Tex. R. Civ. P. 14b and 191.4(e) (formerly Rule 209), which provide as follows:

> **Rule 14b. Return or Other Disposition of Exhibits.**
>
> The clerk of the court in which the exhibits are filed shall retain and dispose of the same as directed by the Supreme Court.

> **Rule 191.4(e).**
>
> **Retention requirement for courts.** The clerk of the court shall retain and dispose of deposition transcripts and depositions upon written questions as directed by the Supreme Court.

The Supreme Court, effective January 1, 1988, adopted two orders relating to retention and disposition of exhibits and depositions. The orders are essentially identical:

**Supreme Court Order Relating to Retention and Disposition of Exhibits**

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

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

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

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

**Supreme Court Order Relating to Retention and Disposition of Depositions Transcripts and Depositions Upon Written Questions**

In compliance with the provisions of Rule 209, the Supreme Court hereby directs that deposition transcripts and depositions upon written questions be retained and disposed of by the clerk of the court in which the same are filed upon the following basis.

> The order shall apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two years after judgment was signed; and (2) all other cases in which judgment has been signed for one year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court.
>
> After first giving all attorneys of record written notice that they have an opportunity to claim and withdraw the same, the clerk, unless otherwise directed by the court, may dispose of them thirty days after giving such notice. If any such document is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.

These orders permit clerks to destroy exhibits and deposition transcripts in a case one year after final judgment (two years if service was by publication), provided no appeal is pending, upon individual notice to the attorneys of record.

**B. Experience of district clerks.** District court clerks have complained about these procedures for some time. As reflected in the letter from Charles Bacarisse, Harris County has "an estimated 3.5 million case files, 106,500 civil exhibits, and 19,100 civil depositions currently in inventory. The exhibits range from enlarged charts, texts and photographs to 55-gallon drums, automobile parts, torn clothing, etc." Mr. Bacarisse's primary concern is with the notice provision and is two-fold: (1) compliance is expensive, especially in larger counties; and (2) compliance, especially in long disposed cases, is very difficult because attorneys have often either passed away or moved. Bonnie Wolbrueck, District Clerk of Williamson County and a member of the subcommittee agreed that notice is time consuming for the clerks, that many notices are returned as undeliverable by the post office, and that those few attorneys responding to the notices have little recollection of the case or the exhibits. In some instances, however, the attorneys do request return of the exhibits or depositions.

The Harris County District Clerk's office has twice requested, and received, from the Supreme Court a special order permitting disposition of exhibits and depositions upon publication, as opposed to individual notice. In each instance, the clerk's office posted a generic notice in the Texas Bar Journal stating that the office would begin disposition of exhibits and depositions in cases that met the requirements of the court's order (generally, one year after final judgment or two years after final judgment in cases involving service by publication). *See* Appendix B, 55 Tex. B. J. 111, 500 (reprinting orders in Misc. Docket Nos. 92-0024, 92-0060). The effect of these past orders is to eliminate the need

for individual notice in cases that are final and to allow disposition of exhibits and depositions thirty days following the date of publication of the notice.

Mr. Bacarisse has proposed that the standing order be amended to permit notice by publication and that disposition be permitted beginning the third month after publication in the Texas Bar Journal.

**C. Analysis of Subcommittee.** The subcommittee viewed the notice requirement as a substantial burden on the district clerks in civil cases, especially given that, at the time the notice is given, judgment in the case was rendered one to two years earlier. The subcommittee identified the issues as two-fold: (1) who should have principal responsibility for insuring that any desired exhibits or depositions are timely withdrawn, the clerk or the parties; and (2) whether notice by publication adds any protections that could not be accomplished by either a global change to the standing order or a rule amendment.

The subcommittee agreed that the principal burden for withdrawing exhibits and depositions should be on the parties and not the clerk. The subcommittee looked to federal court practice — each district court by local rule regulates disposition of exhibits. Most of the federal district courts in Texas place the burden on the parties to withdraw exhibits within a certain time period after the case becomes final:

**Northern District of Texas Local Rule 79.2 Disposition of Exhibits**

> *Removal or Destruction After Final Disposition of Case.* All exhibits in the custody of the court must be removed from the clerk's office within 60 days after final disposition of a case. The attorney who introduced the exhibits shall be responsible for their removal. Any exhibit not removed within the 60-day period may be destroyed or otherwise disposed of by the clerk.

**Eastern District of Texas Local Rule CV-79**

> Books and Records Kept by the Clerk
> *(a) Disposition of Exhibits And/or Sealed Documents by the Clerk.* Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:
> (1) Exhibits. Destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial;
> (2) Sealed documents. Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies.

The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

**Western District of Texas CV-79**

Books and Records Kept by the Clerk and Entries Therein.

No record, paper or deposition in the files of the Court shall be taken from the office or custody of the clerk, except upon written consent of the Court. The party offering any exhibit or deposition shall be responsible for its removal from the clerk's office within sixty days after the final disposition of the case, including appeal thereof. A detailed receipt shall be given by the party to the clerk. Any exhibit or deposition remaining more than sixty (60) days after final disposition of the case, including appeal, may be destroyed or otherwise disposed of by the clerk.

The subcommittee believed that a similar approach should be taken in the state courts, placing the burden on the parties and not the clerks to ensure the timely withdrawal of exhibits and depositions.

The subcommittee also determined that there was no substantial advantage to notice by publication as opposed to altering the standing order or rules to impose an obligation on the parties to withdraw exhibits and depositions within a certain time period following finality of judgment. The latter approach would establish a rule in all cases and require attorneys to add to their tickler system a date by which exhibits and depositions must be withdrawn. The former approach would make that date less certain, as it would hinge on dates of publication by various district courts across the state.

**Recommendation:** The subcommittee thus recommends that either the standing order or the rules be amended to adopt an approach similar to that of the federal district courts, setting a time certain following the date a case becomes final by which parties must withdraw exhibits and depositions.

**D. Means of Making Change.** Current regulation of the disposition of exhibits in civil cases requires only Supreme Court action. The Government Code grants the Texas State Library and Archives Commission authority to issue records retention schedules for local governments and state agencies. TEX. GOV'T CODE §§ 441.158, 441.185. These schedules consist of the Commission's prescribed retention periods as well as retention periods prescribed by other law. *See id.* (requiring the Commission to state in its schedules the retention periods prescribed by federal or state law, rule of court, or regulation for any record and to prescribe retention periods for all other records). The Commission has approved a schedule for district courts; the schedule references the

supreme court's orders on Texas Rules of Civil Procedure 14b and 191.4(e) (formerly 209).

The Government Code expressly provides that, after the adoption of a records retention schedule, a retention period for a record prescribed in a new or amended rule of court that differs from that in a records retention schedule prevails over that in the schedule. TEX. GOV'T CODE § 441.158. Upon inquiry, the Commission has confirmed that it will modify its schedules to accommodate the Court's decision on the Harris County request.

**Recommendation:** Because disposition of exhibits and depositions is currently regulated by standing order and because the Court has indicated it would like to proceed on this matter quickly, the subcommittee recommends that the standing order be altered to place a time certain by which parties must withdraw exhibits and deposition and to eliminate individual notice. The subcommittee would recommend that the Court encourage district clerks to post the revised order on their websites and in their offices. The subcommittee, however, would recommend that, after a period of time to see whether the change is working well and fairly, the language of the standing order be incorporated into Rules 14b and 191.4(e), as the subcommittee believes that the rules are more accessible than standing orders and provide better notice.

**E. Proposed Changes to Standing Orders.** The proposed changes immediately follow this report. The changes are three-fold: (1) the notice requirement is eliminated; (2) the changes place the burden on the parties to withdraw exhibits and depositions within thirty days following the date the case becomes subject to the order; and (3) only the party offering the exhibit or deposition may withdraw it.

Under this proposal, the time period for withdrawal is not substantially altered. The changes leave in place the current time schedule: a case becomes subject to the rule on the later of (a) in most cases, one year after final judgment, if no appeal is taken; (b) in cases in which service is made by publication, two years after final judgment; and (c) in cases in which an appeal is taken, thirty days after the appellate court issues its mandate. The clerk may begin disposition thirty days after the case becomes subject to the standing order, as opposed to thirty days after notice that a case had become subject to the standing order.

The subcommittee also believed that the clerk should not be the arbiter of disputes over ownership of exhibits and depositions nor should the clerk have the burden of replicating or photographing disputed items. Under the proposal, only the party who offered the exhibit or depositions has the ability of right to withdraw it. The standing order, however, would allow a non-offering party to obtain a ruling from the court to permit withdrawal or to preserve the items at any time before the period expired.

## IV. Storage of Bulky Items

Aside from notice, the clerks are also facing problems of storage space, particularly for bulky items like those identified in Mr. Bacarisse's letter: "enlarged

charts, texts and photographs to 55-gallon drums, automobile parts, torn clothing, etc." The clerk currently has an obligation to keep these items for one to two years following final judgment.

The subcommittee agreed that the clerk should not be burdened in most cases with serving as a storage facility for oversized items, unless those items are critical to an appeal. Again, the experience of the Texas federal district courts was instructive. Several require the parties to submit a file-sized reproduction or photograph prior to the end of the trial and to withdraw oversized exhibits at that time. The parties would bear the burden of transmitting original exhibits to the appellate court in those rare instances that such items were needed on appeal.

**Southern District of Texas LR 79.2(A) Disposition of Exhibits**

> Exhibits that are not easily stored in a file folder (like posters, parts, or models) must be withdrawn within two business days after the completion of the trial and reduced reproductions or photographs substituted.

**Eastern District of Texas Local Rule CV-79(c)(3)**

> The parties shall provide letter-sized copies of pictures of any physical or oversized exhibit to the court prior to the conclusion of trial. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

This approach has several advantages. It greatly reduces the storage burden currently imposed on district clerks. It is also more compatible with electronic storage. Many of the larger clerk's offices are scanning all court documents. Currently, the clerks have no ability to scan bulky exhibits.

**Recommendation.** The subcommittee would recommend that the civil rules be amended to impose a requirement that parties substitute file-sized copies or reproductions of bulky items prior to the end of trial and withdraw the items at that time. The subcommittee, however, recognizes that this change would effect several rules: Tex. R. Civ. P. 75b, Filed Exhibits: Withdrawal; Tex. R. App. P. 34.5(f), relating to original exhibits; and possibly other rules. The subcommittee would like to have the benefit of discussion by and input from the full committee prior to embarking on this task.

**Subcommittee Recommendation on Proposed Changes to Supreme Court Order Relating to Retention and Disposition of Exhibits**

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

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

The party who offered an exhibit must remove it from the clerk's office within thirty days of the later of (1) a case becoming subject to this order, or (2) the date this order is published in the Texas Bar Journal. ~~After first giving all attorneys of record thirty dates written notice that they have an opportunity to claim and withdraw the trial exhibits, t~~ The clerk, unless otherwise directed by the court, may dispose of any ~~the~~ exhibits remaining after such time period. ~~If any such exhibits is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.~~

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

**Subcommittee Recommendation on Proposed Changes to**
**Supreme Court Order Relating to Retention and Disposition of Depositions**
**Transcripts and Depositions Upon Written Questions**

In compliance with the provisions of Rule ~~209~~191.4(e), the Supreme Court hereby directs that deposition transcripts and depositions upon written questions be retained and disposed of by the clerk of the court in which the same are filed upon the following basis.

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

The party who offered a deposition transcript or deposition upon written questions must remove it from the clerk's office within thirty days of the later of (1) a case becoming subject to this order, or (2) the date this order is published in the Texas Bar Journal. ~~After first giving all attorneys of record written notice that they have an opportunity to claim and withdraw the same, t~~ The clerk, unless otherwise directed by the court, may dispose of any deposition transcript or deposition upon written questions remaining after such time period. ~~them thirty days after giving such notice. If any such document is desired by more than one attorney, the clerk shall make the necessary copies and prorate the cost among all the attorneys desiring the exhibit.~~

**Appendix to Report from Subcommittee on TRCPs 1-14c**
**Disposing of Exhibits and Depositions after Notice by Publication**
**December 21, 2004**

| | |
|---|---|
| Appendix A | Letter from Hon. Charles Bacarisse to Chief Justice Thomas R. Phillips (January 22, 2003) |
| Appendix B | 55 Tex. B. J. 111, 500 (reprinting orders in Misc. Docket Nos. 92-0024, 92-0060) |

# Appendix A

CHARLES BACARISSE
HARRIS COUNTY DISTRICT CLERK

January 22, 2003

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

Dear Justice Phillips:

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

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

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

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

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

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

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

Your timely consideration of this matter would be greatly appreciated.

Sincerely,

CHARLES BACARISSE
District Clerk

CEB/dkr
Enclosures

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. _____

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

**ORDERED:**

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

In any case—

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

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

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

SIGNED AND ENTERED this _____ day of _____, 2003.

_____
Thomas R. Phillips, Chief Justice

_____
Nathan L. Hecht, Justice

_____
Craig T. Enoch, Justice

_____
Priscilla R. Owen, Justice

_____
Harriet O'Neill, Justice

_____
Wallace Jefferson, Justice

_____
Michael Schneider, Justice

_____
Steven W. Smith, Justice

_____
Dale Wainwright, Justice

# Appendix B

# In the Supreme Court of Texas

Miscellaneous Docket No. 0024

## Relating to the Retention and Disposition of Depositions By the District Clerk of Harris County

**ORDERED:**

Pursuant to Rule 209, Texas Rules of Civil Procedure, deposition transcripts and depositions upon written questions shall be retained by the District Clerk of Harris County as required by law unless disposed of as allowed by this Order or this Court's general order effective Jan. 1, 1988,

In any case —

1. in which judgment was rendered upon service of process by publication and signed prior to Jan. 1, 1987, and in which no motion for new trial was filed within two years after judgment was signed, or
2. in which judgment was signed prior to Jan. 1, 1985, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court—

the district clerk of Harris County may dispose of all deposition transcripts and depositions upon written questions beginning in the third month after the month in which notice of the clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except material which, prior to disposition, the clerk has received a written notice to withdraw, identify the case number, the style of case, and the materials to be withdrawn.

**SIGNED AND ENTERED the 13th day of December 1991.**

# ABA Gambrell Professionalism Award

Nominations are open for the second annual awards competition recognizing bar association and law school projects to enhance professionalism among lawyers.

Entries will be accepted until May 1, and awards will be presented at the ABA Annual Meeting in August in San Francisco. The ABA Special Coordinating Committee on Professionalism and Center for Professional Responsibility will confer up to three awards of $3,750 each for programs on-going after June 1, 1991. Projects previously recognized are ineligible.

The ABA Standing Committee will judge entries based on overall program quality and success, suitability of the program for replication elsewhere, likelihood the program will continue, innovative nature of the program, substantive strength of the program in professionalism, and scope of the program.

For additional information on eligibility or nominating procedures, contact Arthur Garwin, ABA assistant professionalism counsel, 541 N. Fairbanks Ct., 14th Floor, Chicago, IL 60611-3314; 312/988-5294

# Law Firms Experience Economic Downturn

Law firms are dismissing an unprecedented number of associates and, for the first time, are requiring significant numbers of partners to withdraw. Although it has been well-chronicled in the press, this trend has not been tracked and quantified, leading firms to question their termination policies and procedures. A recent survey by Hildebrandt, Inc. has revealed how widespread dismissals are. It also indicates that the terminations are far from over.

The Somerville, NJ-based legal management consulting company, surveyed the nation's largest law firms. Of the 105 firms responding, more than half expect to ask partners to leave in the next 18 months, and nearly nine out of 10 anticipate terminating associates in the same period.

The survey showed that 60 percent of responding firms asked partners to withdraw during the past 18 months. Approximately one-third of the firms surveyed had no involuntary withdrawals in that time period. Half of these expect them in the next 18 months and nearly two-thirds of the firms that terminated partners anticipate they will ask more to leave in the next 18 months.

Although a growing number of firms are asking partners and associates to leave, few have established policies on severance.

"We were astonished to discover the number of firms that do not compel withdrawing partners to sign settlement agreements," said Edwin Mruk, senior consultant with Hildebrandt Career Counseling for Professionals. "In fact, firms that have terminated partners in the past actually are less likely to have separation policies than those that have not. This is a clear case of lawyers not following the advice that they give to their clients."

"However," says Mruk, "lawyers are not being dumped on the sidewalk. In many cases, they are being given severance pay, secretarial services and use of office space, as well as the services of professional out placement consultants."

Hildebrandt is a management consulting company that specializes in helping law practices cut costs, increase efficiency, and maximize profits.

For more information about the survey call Mruk at 212/983-8045 or Ann Levine or Carol Buckner at 908/725-1600.

# Toll-Free Numbers Available

A new toll-free phone number is available to persons seeking information about filing a complaint against a Texas attorney. The toll-free number is part of an overhaul of the State Bar's grievance system which goes into effect in May. Those who call 1/800/932-1900 will receive information about the system and be guided through the initial steps of filing a complaint.

Another toll-free number, 1/800/932-1990, is available to any member of the public or profession seeking information about the State Bar of Texas or the legal profession in Texas.

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 92-0060

**Relating to the Retention and Disposition Of Exhibits by the District Clerk of Harris County**

ORDERED:

Pursuant to Rule 14b, Texas Rules of Civil Procedure, exhibits shall be retained by the District Clerk of Harris County as required by law unless disposed of as allowed by this order or this court's general order effective Jan. 1, 1988.

In any case —

(1) in which judgment was rendered upon service of process by publication and signed prior to Jan. 1, 1987, and in which no motion for new trial was filed within two years after judgment was signed, or

(2) in which judgment was signed prior to Jan. 1, 1985, and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court —

the District Clerk of Harris County may dispose of all exhibits beginning in the third month after the month in which notice of the clerk's intention to do so is published conspicuously in the *Texas Bar Journal*, except materials which, prior to disposition, the clerk has received a written notice to withdraw, identifying the case number, the style of the case, and the materials to be withdrawn.

Signed and entered the 25th day of February 1992.

# How the New Grievance System Works

A CLE Video from the State Bar of Texas

In 1990, the State Bar membership voted to adopt a new system for handling lawyer discipline and disability.

That system took effect May 1.

In an effort to help Texas lawyers understand the new system, the State Bar Professional Development program has produced a videotape highlighting the changes in how grievances are handled in Texas. The videotape also demonstrates important new rules affecting the investigatory and evidentiary hearings which are part of the system.

The new system affects all lawyers. To ensure that all Texas lawyers are educated about the new system, the State Bar of Texas will present this videotape free of charge throughout the state during June. No registration fee will be charged and attorneys can earn a half hour of MCLE credit.

The videotape includes discussion and demonstrations by James McCormack, general counsel of the State Bar of Texas; Steve W. Young, first assistant general counsel; Sam Bargainer, office manager of the Dallas regional office of the general counsel; and Eddie Vassallo, grievance committee chair, Dallas. Research and scripting of the videotape was done by Marilee Neff, director of the Dallas regional office of the general counsel.

This program was made possible by a grant from the Texas Bar Foundation.

In addition, the general counsel's office has developed model language to help attorneys meet the requirement that they notify clients of the existence of the grievance process.

A brochure announcing the dates for presentation of the videotape should arrive in attorneys' offices in late May. Seating at the video program will be on a first come, first served basis.

# Full-Text Opinions — Ready When You Are

In an effort to better serve Texas lawyers, the State Bar of Texas has implemented a new process whereby subscribers to the *Texas Lawyers' Civil* or *Criminal Digests* have access to the fastest full-text opinion service in the state. The service is available to subscribers 24 hours a day, 365 days a year.

To order an opinion from the FASTBACK OPINION Service, subscribers can use their touch-tone phones, dial toll-free, 1/800/925-5567 and receive the full-text of any Texas appellate opinion reported in the digests. Within one minute of an order, the service will begin faxing the opinion. Subscribers will be billed for the service.

The charge is four dollars per call and 75 cents per page for as many opinions as ordered per call. The number of pages and the identification number of the opinions are shown in the digests. If an attorney would rather receive the text through the mail there is no additional charge. For a $20 fee, the opinion can be sent overnight by express delivery.

Non-subscribers to the digests can use the FASTBACK service for a $10 per call surcharge. A year's subscription to either the civil or criminal digest is $35 plus tax and may begin at anytime.

If you need more information or would like to subscribe to one or both of the digests, write Digest Subscription (specify criminal or civil), State Bar of Texas, P.O. Box 12487, Austin 78711, or call 512/463-1403. Mastercard and Visa are accepted.

# Toll-Free Numbers Available

A toll-free phone number, part of the overhaul of the State Bar of Texas grievance procedure, is available to persons seeking information about the grievance process. Those who call 1/800/932-1900 will be guided through the initial steps of filing a complaint.

Another toll-free number, 1/800/932-1990 is available to those seeking information about the State Bar.

# The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
HARRIET O'NEILL
WALLACE B. JEFFERSON
MICHAEL H. SCHNEIDER
STEVEN WAYNE SMITH
DALE WAINWRIGHT

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

CLERK
ANDREW WEBER

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER


June 16, 2003

Mr. Charles L. Babcock, Chairman
Supreme Court Advisory Committee
Jackson Walker
901 Main Street, Suite 6000
Dallas TX 75202-3797

Dear Chip:

As you know, the Seventy-Eighth Legislature has delegated to the Supreme Court the responsibility for drafting rules to implement House Bill 4. Three major assignments are:

- MDL rules: to adopt rules of practice and procedure for the judicial panel on multidistrict litigation created by chapter 74, subchapter H of the Government Code (HB 4, § 3.02);

- Offer-of-settlement rules: to promulgate rules implementing chapter 42 of the Civil Practice and Remedies Code providing for offers of settlement (HB 4, § 2.01); and

- Class action rules: to adopt rules to provide for the fair and efficient resolution of class actions, including rules that comply with the mandatory guidelines of chapter 26 of the Civil Practice and Remedies Code (HB 4, § 1.01).

HB 4 also directs that Rule 407(a) of the Texas Rules of Evidence be amended to conform to Rule 407 of the Federal Rules of Evidence (HB 4, § 5.03). In addition, other rules changes may be necessary or appropriate because of the enactment of HB 4 and other statutes this session. Chris Griesel, the Court's Rules Attorney, has compiled the attached list of possible changes, which you will see is quite lengthy. This is only a preliminary list.

The Supreme Court is of the view that the Legislature's delegation of rule-making responsibility to the Supreme Court to effectuate the Legislature's policy choices is in the best interests of the administration of justice and of the people of Texas. The Legislature's actions this year reconfirm the statement of the Forty-Sixth Legislature that "it is essential to place the rule-making power in civil actions in the Supreme Court, whose knowledge, experience, and intimate contact with the problems of judicial administration render that Court particularly qualified to mitigate and cure these evils [of unnecessary delay and expense to litigants]." Act of

May 12, 1939, 46th Leg., R.S., ch. 25, 1939 Tex. Gen. Laws 201, 202 (enacting what is now Tex. Gov't Code § 22.004). The Supreme Court gladly accepts this responsibility and intends to comply fully with the Legislature's directives.

The Court relies heavily on the counsel of its Advisory Committee, as it has for sixty-four years. The members of the Committee should consider the Legislature's faith in the rule-making process a credit to their wisdom and experience and to the value of their work. I and my colleagues look forward to working with you on these new assignments.

The amendment to Rule 407(a) of the Texas Rules of Evidence is to be made "[a]s soon as practicable" after HB 4's effective date, September 1, 2003 (HB 4, § 5.03). The MDL rules also apply beginning that date. The class action rules are to be "adopted on or before December 31, 2003", and the offer-of-settlement rules "must be in effect on January 1, 2004." The Supreme Court is tentatively of the view that the deadlines specified in HB 4 take precedence over the requirements for publication and comment contained in sections 22.004 and 74.024 of the Government Code but that those requirements should be followed where possible. Therefore, the Court has adopted the following schedule:

- The Court will next meet to consider the Committee's recommendations and any other matters pertaining to rules changes the week of August 25, 2003.

- Effective September 1, 2003, the Court will amend Rule 407(a) of the Texas Rules of Evidence and adopt MDL rules, both to be disseminated to the bench and bar as widely as possible and published in the October issue of the *Texas Bar Journal* for formal comment. The changes may be revised following comments.

- The Court will also publish in the October issue of the *Texas Bar Journal* for comment an offer-of-settlement rule and a revised class action rule to comply with HB 4's mandatory guidelines, both rules to take effect January 1, 2004.

- In the October issue of the *Texas Bar Journal*, or as soon thereafter as possible, the Court will publish for comment any further changes in the class action rule, any rules changes adopted in accordance with pending recommendations by the Advisory Committee, and any rules changes to be made regarding ad litem fees and referral fees, as recommended by the Jamail Committee.

The Court believes that this schedule will comply with the mandates of HB 4, permit as much comment as possible, allow for reaction to that comment, complete related pending work before the Committee, and complete action on Committee recommendations already made. Other proposals before the Committee, and other changes that may be necessary or appropriate due to recent legislation, should be deferred until the proposed schedule has been completed.

I fully realize that this is an enormous amount of work for the Committee, but I believe the Committee is

entirely capable of assisting the Court in discharging its responsibility.

The following issues are of interest to the Court:

- Rule 407(a), Texas Rules of Evidence: What impediments are there to simply conforming the language to Rule 407 of the Federal Rules of Evidence?

- MDL rules: How should the judicial panel function? Where should it meet? When must issues be decided by a hearing before the panel and when by submission? May the panel confer and decide issues by telephone, by letter, or by email? Where will records be kept? Should policies for decision be stated in the rules or left entirely for the panel to set? Assuming that policies should be thoroughly stated in the rules, what should those policies be?

- Offer-of-settlement rule: Can the work already done by the Committee on this rule be modified to comply with the requirements of HB 4? What additional parameters should be included consistent with those requirements?

- Class action rule: In addition to changes required by HB 4's mandatory guidelines, should the rule require opt-in classes for certain claims? Assuming that it should, what should those claims be?

As always, Chip, the Supreme Court extends to you and all of the members of the Committee its deepest gratitude.

Sincerely,

Nathan L. Hecht
Justice

c: The Chief Justice and Justices of the Supreme Court of Texas
The Members of the Supreme Court Advisory Committee
The Members of the Jamail Committee
The Hon. Bill Ratliff
The Hon. Joe Nixon

SUMMARY OF RULES CHANGES TO EXAMINE

| BILL (section or article affected) | NATURE OF LEGISLATIVE CHANGE | RULES TO EXAMINE |
|---|---|---|
| **HB 4** | | |
| Sec 1.01 | By 12/31/03, the "Supreme Court shall adopt rules to provide for fair and efficient resolution of class actions". Bill lays out some guidelines for class fee recovery | TRCP 42. Consider the Committee's previous work on the subject, including review of previous Jamail committee drafts, and make suggestions |
| Sec. 1.02 | Amends cases that are appealable by interlocutory appeal to the Supreme Court and defines "conflicts jurisdiction" | Review TRAP rules, including Rule 53.2 |
| Sec. 1.03 | Amends list of cases that may be brought by interlocutory appeal; Allows certain classes of cases to be stayed pending appellate resolution; defines "conflicts jurisdiction" | Review TRAP rules, including comment to TRAP 29 and Rule 53.2 |
| Sec. 1.05 | The effective date of this bill is 9/01/03 and appeals to all appeals filed after that date | Does the Court need to take any "emergency" rules action before 9/01/03 ? |
| Sec. 2.01 | By 12/31/03, the "Supreme Court shall promulgate rules implementing" the offer of settlement provisions of HB 4. The bill lays out more extensive guidelines for provisions of the rules but leaves the court with a number of issues to resolve. | Compare the committee's existing work to the guidelines of HB 4 and make any additional suggestions |
| Sec. 3.01 | The Supreme Court may adopt " rules relating to the transfer of related cases for consolidated or coordinated pretrial proceeding" (A similar, slightly narrower, grant of authority was also given the Court by HB 3386)<br><br>The Legislature created a "judicial panel on multidistrict litigation". The Chief Justice will appoint 5 active court of appeals or administrative judges to the panel. The rules must allow the panel to transfer related civil actions for consolidated or coordinated pretrial | Determine changes needed to TRCP or Rules of Judicial Administration. Consider the operation of existing RJA 11 and federal MDL rules |

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| | proceedings; allow for transfers and remands of actions; and provide for appellate relief of the panel's orders. | |
| Sec. 3.03 | Plaintiffs added by joinder are required to independently meet venue provisions or face mandatory transfer to county of proper venue or face dismissal | Determine if joinder rules ,TRCP 39 et.seq, require amendment. Determine if interlocutory appeal provision, including stay provision, requires TRAP change or comment. |
| Sec. 4.01 et seq. | Changes made to proportionate responsibility submission and designation of responsible parties. Changes in some cases the method of reducing damages from dollar amount to percentage amount | Determine if these changes require amendment to TRCP, including rules affecting submission of charge |
| Sec. 4.12 | Requires amendment of TRCP Rule 194.2, as soon as practicable, to include disclosure of responsible third parties | TRCP Rule 194.2 |
| Sec. 5.01 et seq. | Makes changes to liability of defendants in certain products cases | Determine if these changes require amendment to TRCP |
| Sec. 5.03 | Requires Supreme Court to amend TRE Rule 407(a) to conform with FRE Rule 407 | TRE Rule 407(a) |
| Sec. 7.01 et seq. | Creates statutory changes to amount of appeals bonds. Applies to any judgment filed after 9/01/03 | Determine changes needed to TRAP, including TRAP 24. Does the Court need to take any "emergency" rules action before 9/01/03 ? |
| Sec. 8.01 | HB 4 repeals evidentiary bar on seat belt non-use. | Determine if this bar is mentioned in TRCP or TRE and suggest appropriate changes |
| Sec. 10.01 et seq. | Revision of methods for notice, evidence, and procedure of medical liability and medical malpractice actions | HB 4 creates an new system of notice and pleadings, submission of expert reports, and discovery for health care liability claims. |

| | | |
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| | | Determine what actions to take to modify existing TRCP, TRE, and TRAP rules relating to pleading and discovery rules to, at the minimum, place bench and bar on notice of the conflicting health care liability provisions.<br><br>Consider the adoption of Section 74.002, Civil Practice and Remedies Code in Section 10.01 relating to conflicts between court rules and the statute. Also consider a method to advise bench and bar that "local rules" may not conflict with the statutory changes<br><br>Change all 4590i references to Chapter 74, Civil Practice and Remedies Code. |
| Sec 13.03 | Statutory change requiring exemplary damage jury verdict be unanimous and a jury charge must contain a instruction alerting the jury to that fact | Determine changes needed to TRCP, including TRCP 292. Does the Court need to take any "emergency" rules action before 9/01/03 ? |
| Sec. 23.02 | Various portions of HB 4 become effective on various dates and apply to differing classes of cases | Does the Court need to take any immediate action or make "emergency" rules action on any of the changes to the court rules? |
| ALL | | Alert the court to any other rules changes required by HB 4 |

| **Family Code Issues** | | |
|---|---|---|
| HB 821 Sec.1<br><br>HB 518 Sec. 1<br><br>HB 1815 (all)<br><br>HB 883 (all) | This bill allows notice of an associate judge's report , including proposed order, to be given by fax and creates a rebuttable presumption of receipt.<br><br>Creates new method of service by publication and new method for calculating the date notice is given<br><br>Alters scope and duties of guardian ad litems and attorney ad litems in suits affecting parent child relationship<br><br>The date an agreed order or a default order is signed by an associate family law judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court. | Determine if these changes require amendment to TRCP |
| **Other Changes** | | |
| HB 3306<br><br>HB 3386 | Objections to a visiting judge must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earlier. Notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.<br><br>Allows the Supreme Court to adopt Rules of Judicial Administration to allow for the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending. | Determine if these changes require amendment to TRCP or RJA |
| SB 352 | A judge commits an offense if the judge solicits or | Determine if this prohibition |

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| | accepts a gift or a referral fee in exchange for referring any kind of legal business to an attorney or law firm. This does not prohibit a judge from soliciting funds for appropriate campaign or officeholder expenses as permitted by Canon 4D, Code of Judicial Conduct or from accepting a gift in accordance with the provisions of Canon 4D, Code of Judicial Conduct. | needs to be included within recusal rule before court or is already covered |
| SB 1601 | Before entering an order approving settlement or judgment, the court shall require all defendants to report to the court by a certain date the total amount of all funds paid to the class members. After the report is received, the court may amend the settlement or judgment to direct each defendant to pay the sum of any unpaid funds to the clerk of the court. The unpaid funds will be placed in a trust fund and may be spent only to programs approved by the supreme court that provide civil legal services to the indigent. | Determine if a change to TRCP, including Rule 42 is appropriate. |

JUDGE TRACY CHRISTOPHER
295TH CIVIL DISTRICT COURT
301 FANNIN
HOUSTON, TEXAS 77002
(713) 755-5541

COP

April 27, 2004

Honorable Nathan Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711-2248

Re: Rule 223 of the Texas Rules of Civil Procedure

Dear Justice Hecht:

We currently have our individual juror lists in Harris County printed out by computer. With a push of a button, our computer will "shuffle" the names on the list and reprint a new jury list. Unfortunately such a shuffle does not comply with a literal reading of Rule 223.

We are also in the process in Harris County of scanning our juror information cards into a computer. Once that is done, we would also be able to shuffle the jury list and then rearrange the juror information cards in the computer for quick reprinting.

As you know, an old fashioned shuffle can take 45 minutes to an hour to complete. Our jurors wait patiently (or not) for the process to be completed. The computerized system will allow a shuffle to be completed much more quickly.

The judges in Harris County would like to request a change to the language of Rule 223 to allow for the computer shuffle. Thank you for considering this.

Tracy Christopher

# JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

Peter Vogel
Chair

June 28, 2004

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court of Texas
201 West 14th Street, Suite 104
Austin, Texas 78701

Re: Recommended Changes to the Texas Rules of Civil Procedure (TRCP) for Electronic Court Filing

Dear Chief Justice Phillips:

Attached for your consideration are the recommended changes to the Rules of Civil Procedure (TRCP) to incorporate electronic court filing. The recommended TRCP changes are consistent with the standard local rules template agreed by the Court in November 2002 and revised by the Court in June 2004.

These proposed changes to incorporate electronic court filing

a. Allow courts to order electronic filing on the motion of a party in a case (Rule 167),
b. Allow courts to order electronic service on the motion of a party in a case (Rule 167),
c. Allow judges to issue electronic orders (Rule 19a), and
d. Allow electronic service (Rule 21a).

JCIT greatly appreciates the Court's recent agreement to revise the standard local rules for use by Texas courts until the Texas Rules of Civil Procedure are amended.

If you have any questions or comments, please contact me at 214-999-4422 or Mike Griffith at 512-463-1641.

Respectfully submitted,

Peter Vogel
Chair, Judicial Committee on Information Technology

cc: The Honorable Nathan L. Hecht, Justice, Supreme Court of Texas
The Honorable Wallace B. Jefferson, Justice, Supreme Court of Texas

# Proposed Additions and Amendments to the Texas Rules of Civil Procedure in order to Allow for the Electronic Filing (E-Filing) of Documents

June 2004

## Rule 4. Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail, ~~or~~ by telephonic document transfer, or by electronic transmission, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

## Rule 11. Agreements To Be in Writing

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record. A written agreement between attorneys or parties may be electronically filed only as a scanned image.

## Rule 19a. Judge's Orders

A judge signs an order by applying his or her handwritten signature to a paper order or by applying his or her digitized signature to an electronic order. A digitized signature is a graphic image of the judge's handwritten signature.

## Rule 21. Filing and Serving Pleadings and Motions

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefore, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application. In the case of a pleading, plea, motion or application that is electronically filed, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

## Rule 21a. Methods of Service

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by electronic transmission to the recipient's e-mail address, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by electronic transmission to the recipient's e-mail address may only be effected where the recipient has agreed to receive electronic service or where the court has ordered the parties to electronically serve documents. Service by telephonic document transfer or by electronic transmission after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail, ~~or~~ by telephonic document transfer, or by electronic transmission, three days shall be added to the prescribed period. Notice may be served

by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. In the case of service by electronic transmission, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or other form of request. Every certification of service by electronic transmission must include the filer's e-mail address, the recipient's e-mail address and the date and time of service. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

## Rule 45. Definition and System

Pleadings in the district and county courts shall

(a) be by petition and answer;

(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;

(c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense;

(d) be ~~in writing;~~ on paper or be electronically filed with the clerk by transmitting them through TexasOnline.

Paper pleadings shall ~~measuring~~ measure approximately 8½ inches by 11 inches, and shall be signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court. The use of recycled paper is strongly encouraged.

When a paper copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

Electronically-filed pleadings shall be formatted for printing on 8½ inch by 11 inch paper, and shall be signed by the party or his attorney in the manner specified by Rule 57.

All pleadings shall be construed so as to do substantial justice.

## Rule 57. Signing of Pleadings

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party represented by an attorney, the attorney's use of a confidential and unique identifier when filing the pleading constitutes the signature of the attorney whose name appears first in the pleading's signature block unless the pleading states that the use of the identifier constitutes the signature of a different attorney in the signature block. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party not represented by an attorney, the filer's use of a confidential and unique identifier when filing the pleading constitutes the signature of the party.

## Rule 74. Filing With the Court Defined

The filing of pleadings, other ~~papers~~ documents, and exhibits as required by these rules shall be made by filing them with the clerk of the court~~,~~. A ~~except that the~~ judge may permit ~~the papers~~ paper documents to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. A judge may not accept electronically-transmitted documents for filing. This rule does not prohibit judges from accepting and considering pleadings submitted on electronic media during trial.

? Is this to keep Tex Online in business? We want to limit it to Courtesy Copies?

## Rule 74a. When Electronically-Filed Document is Considered Filed

(a) Except as noted in part (c) of this rule, a person who electronically files a document is considered to have filed the document with the clerk at the time the filer electronically transmits the document to an electronic filing service provider (EFSP). A report of the electronic transmission of the document from the filer to the EFSP shall be prima facie evidence of the date and time of the transmission.

(b) When a clerk accepts an electronically-transmitted document for filing, the clerk shall place an electronic file mark on the front page of the document noting the date

and time the document was filed which, except as noted in part (c) of this rule, shall be the date and time that the filer electronically transmitted the document to an EFSP.

(c) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, an electronically-filed document that serves to commence a civil suit will not be considered to have been filed on Sunday when the document is electronically transmitted to an EFSP on Sunday. Rather, such a document will be considered to have been filed on the succeeding Monday.

## Rule 74b. Documents That May Not be Electronically Filed

All documents that may be filed in paper form may be electronically filed with the exception of the following:

(a) documents in juvenile cases;
(b) documents in mental health cases;
(c) documents in proceedings under Chapter 33, Family Code;
(d) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
(e) bonds;
(f) wills or codicils thereto;
(g) subpoenas;
(h) affidavits of inability to afford court costs.

## Rule 93. Certain Pleas to be Verified

(a) A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.

2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.

3. That there is another suit pending in this State between the same parties involving the same claim.

4. That there is a defect of parties, plaintiff or defendant.

5. A denial of partnership as alleged in any pleading as to any party to the suit.

6. That any party alleged in any pleading to be a corporation is not incorporated as alleged.

7. Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it states that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.

8. A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.

9. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

10. A denial of an account which is the foundation of the plaintiff's action, and supported by affidavit.

11. That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.

12. That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.

13. In the trial of any case appealed to the court from the Industrial Accident Board the following, if pleaded, shall be presumed to be true as pleaded and have been done and filed in legal time and manner unless denied by verified pleadings:

    (a) Notice of injury.
    (b) Claim for compensation.
    (c) Award of the Board.
    (d) Notice of intention not to abide by the award of the Board.
    (e) Filing of suit to set aside the award.

(f) That the insurance company alleged to have been the carrier of the workers' compensation insurance at the time of the alleged injury was in fact the carrier thereof.
(g) That there was good cause for not filing claim with the Industrial Accident Board within the one year period provided by statute.
(h) Wage rate.

A denial of any of the matters set forth in subdivisions (a) or (g) of paragraph 13 may be made on information and belief.

Any such denial may be made in original or amended pleadings; but if in amended pleadings the same must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them, must be proved.

14. That a party plaintiff or defendant is not doing business under an assumed name or trade name as alleged.

15. In the trial of any case brought against an automobile insurance company by an insured under the provisions of an insurance policy in force providing protection against uninsured motorists, an allegation that the insured has complied with all the terms of the policy as a condition precedent to bringing the suit shall be presumed to be true unless denied by verified pleadings which may be upon information and belief.

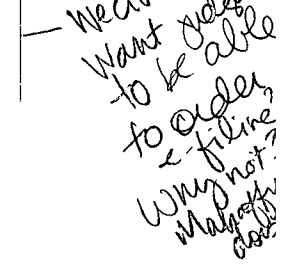
16. Any other matter required by statute to be pleaded under oath.

(b) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.

(c) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to promptly file the document in a traditional manner with the county clerk.

## Rule 167. Orders Regarding Electronic Filing

Upon the motion of a party and for good cause shown, a court may order electronic filing and service of documents other than those documents that may not be electronically filed as set forth in Rule 74b.



IN RE ALL CASES FILED IN THE 58TH DISTRICT COURT (WITH EXCEPTIONS) AS OF JANUARY 7, 2004

IN THE 58TH DISTRICT COURT OF JEFFERSON COUNTY, TEXAS

AMENDED ORDER DESIGNATING ALL CASES E-FILE
AND
SETTING FORTH CERTAIN REQUIREMENTS
IN E-FILE CASES

IT IS HEREBY ORDERED that, henceforth, all cases filed in the 58th District Court of Jefferson County, Texas, shall be, and they are designated E-file cases in accordance with Local Rule 7, EXCEPT that tax cases, cases filed by pro se parties, and seizure and forfeiture cases, shall not be so designated, subject to further orders of this court.

IT IS FURTHER ORDERED that the District Clerk shall not receive any pleadings whatsoever in E-file cases in paper form, save and except for the original petition, and the District Clerk shall not electronically scan paper pleadings to E-file. If the District Clerk receives a paper pleading in an E-file case, the Clerk is ORDERED to return that pleading to the purported filer with a notification that the case is E-file and that no paper pleadings can be received, file-stamped, nor scanned.

IT IS FURTHER ORDERED that the petitions in new cases may be filed in paper form; HOWEVER, the District Clerk must be furnished with an electronic copy of the petition, on disk, within 10 days of the filing.

IT IS FURTHER ORDERED that the District Clerk must be furnished with an electronic disk of all parties, including the addresses of those receiving service, in a format prescribed by the District Clerk.

IT IS FURTHER ORDERED that the District Clerk shall send the notice appended hereto to all new parties to a lawsuit, whether original defendants, cross defendants, or otherwise, advising of this order and of the requirements of Local Rule 7.

IT IS FURTHER ORDERED that each pleading in cases designated as E-file shall be fully and properly labeled, and a pleading shall deal with only one subject matter. Thus, for example, a Motion To Transfer Venue may not be combined with an Answer, but they shall be two separate pleadings, each labeled accordingly and filed separately. In similar fashion, all matters shall be separately pleaded, labeled, and filed, and there shall be no "gang filing". The purpose of this requirement is so that separate matters may be readily indexed and located in the electronic file.

IT IS FURTHER ORDERED that, in E-file cases, only the certificates of serving discovery requests and responses shall be E-filed; neither the requests nor responses shall be filed nor need be filed.

SIGNED AND ENTERED THIS 22nd DAY OF JANUARY, 2004.

JAMES W. MEHAFFY, JUDGE

**DALE WAINWRIGHT**
JUSTICE
THE SUPREME COURT OF TEXAS

P.O. BOX 12248
AUSTIN, TEXAS 78711
(512) 463-1332 P
(512) 936-2308 F

November 8, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Exhibits in Court Reporter's Records

Dear Chip:

The Court would like the Advisory Committee to study the attached memorandum from Frank Montalvo, dated April 13, 2002. Judge Montalvo, who formerly chaired the Court Reporter's Certification Board, recommended that the Uniform Format Manual for Court Reporters, as well as any related court rules, be amended to clarify that any exhibit admitted, tendered in an offer of proof, or offered in evidence should be a part of the court reporter's record. In response to this recommendation, Lisa has drafted proposed revisions to several rules and court orders, including TRCPs 75a & 75b, the order issued under TRCP 14b, and TRAP 13.1. The Court would like this added to the agenda for discussion in the Nov. 12 SCAC meeting, if possible.

As always, thank you for all the hard work you do for the Court.

Sincerely,

Dale Wainwright

J. Dale Wainwright

cc: Court
Lisa Hobbs, Rules Attorney

COURT REPORTERS
CERTIFICATION BOARD



# M E M O R A N D U M

To: Thomas R. Phillips, Chief Justice
Justices – Supreme Court

From: Frank Montalvo
District Judge, 288th District Court
Chairman, Court Reporters Certification Board

Subject: **PROPOSED MISCELLANEOUS ORDER**
**Request Approval of Revised Uniform Format Manual**
**Effective September 1, 2002**

Date: August 13, 2002

Dear Chief Justice Phillips and Justices of the Supreme Court:

The Board requests consideration by the Supreme Court of the following proposed *Miscellaneous Order:*

---

**Approval of Revisions to the Uniform Format Manual for Texas Court Reporters**

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The current manual was first adopted for use by the Supreme Court in 1999. The Board approved revisions to the manual at the Board meeting on July 27, 2002, and is now submitting a draft for the Court's approval.

There is one area of confusion regarding **exhibits** that the Board respectfully requests a determination be made by the Supreme Court as to what language is applicable in accordance with Texas Statutes and Rules.

There appears to be a conflict between Rules 75a of the Texas Rules of Civil Procedure and Rule 14b. 75a says, "The court reporter or stenographer shall file with the clerk of the court all exhibits which were **admitted or tendered** on a bill of exception during the course of any hearing, proceeding, or trial."

In the Supreme Court's Order relating to retention and disposition of exhibits, it says, "In compliance with the provision of Rule 14B, the Supreme Court hereby directs that exhibits **offered or admitted** into evidence shall be retained and disposed of by the clerk of the court."

Post Office Box 13131, Austin TX 78711-3131
(512) 463-1630, ext. 0 FAX (512) 463-1117
Email: info@crcb.state.tx.us
Website: www.crcb.state.tx..us

Supreme Court
CRCB – Revised Uniform Format Manual
August 13, 2002

Under the Government Code Section 52.045(b)(1), it states, "the evidence **offered** in the case."

Provided in the draft copy are three figure 5 pages (certification page for Texas CSRs) and three figure 6 pages (certification page for exhibits), on which the language regarding exhibits is presented three ways, " **admitted or tendered"** OR **"offered"** OR my recommendation, **"admitted, tendered in an offer of proof or offered into evidence"**.

Examples are as follows:

---

Figure 5, example 1: "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **admitted or tendered** on an offer of proof."

OR

Figure 5, example 2: "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **offered** into evidence."

OR

Figure 5, example 3 (my recommendation): "I further certify that this Reporter's Record of the proceedings truly and correctly reflects the **exhibits,** if any, **admitted, tendered in an offer of proof or offered** into evidence."

---

Figure 6, example 1: "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **admitted or tendered** on an offer of proof into evidence..."

OR

Figure 6, example 2: "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **offered** into evidence..."

OR

Figure 6, example 3 (my recommendation): "...do hereby certify that the foregoing exhibits constitute true and complete duplicates of the original **exhibits,** excluding physical evidence, **admitted, tendered in an offer of proof or offered** into evidence..."

---

Supreme Court
CRCB – Revised Uniform Format Manual
August 13, 2002

Reporters across the state continue to debate the issue as to whether they are required to retain and include in the Reporter's Record on appeal all exhibits **offered** or only those **admitted** into evidence. The Courts' decision on which form to include in the Uniform Format Manual will clarify the issue. I would respectfully suggest the appropriate language should be, "...**admitted, tendered in an offer of proof or offered** into evidence..."

Enclosed is a draft of the revised Uniform Format Manual and a proposed order, for your convenience.

If we may be of further assistance, please do not hesitate to contact Michele Henricks at:
Phone: (512)463-1747
Email: **Michele.henricks@crcb.state.tx.us**

Thank you very much for your consideration in this matter.

Sincerely Yours,

Frank Montalvo
Chairman, CRCB

FM/mlh

Enclosure(s)

# PROPOSED AMENDMENTS RELATING TO EXHIBITS TO INCLUDE IN REPORTER'S RECORD

*November 11, 2004*

## PROPOSED AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE

**Rule 75a Filing Exhibits: Court Reporter to File with Clerk**

The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted, tendered in an offer of proof, or offered in evidence ~~or tendered on bill of exception~~ during the course of any hearing, proceeding, or trial.

**Rule 75b Filed Exhibits: Withdrawal**

All filed exhibits admitted, ~~in evidence or~~ tendered in an offer of proof, or offered in evidence ~~on bill of exception~~ shall, until returned or otherwise disposed of as authorized by Rule 14b, remain at all times in the clerk's office or in the court or in the custody of the clerk except as follows:

(a) The court may be order entered on the minutes allow a filed exhibit to be withdrawn by any party only upon such party's leaving on file a certified, photo, or other reproduced copy of such exhibit. The party withdrawing such exhibit shall pay the costs of such order and copy.

(b) The court reporter or stenographer of the court conducting the hearing, proceedings, or trial in which exhibits are admitted, tendered in an offer of proof, or offered in evidence, shall have the right to withdraw filed exhibits, upon giving the clerk proper receipt therefor, whenever necessary for the court reporter or stenographer to transmit such original exhibits to an appellate court under the provisions of Rule 379 or to otherwise discharge the duties imposed by law upon said court reporter or stenographer.

## PROPOSED AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE

**13.1. Duties of Court Reporters and Recorders**

The official court reporter or court recorder must:

***

(b) take all exhibits admitted, tendered in an offer of proof, or offered in evidence during a proceeding and ensure that they are marked;

***

The Order Relating to Retention and Disposition of Exhibits dated July 15, 1987, effective January 1, 1988, is amended as follows:

**Supreme Court Order Relating to Retention and Disposition of Exhibits**

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

[This order shall apply only to . . . ]

The Uniform Format Manual for Texas Court Reporters is amended as follows:

OFFICIAL REPORTER'S RECORD - CERTIFICATION PAGE FOR TEXAS CSRs- figure 5

THE STATE OF TEXAS )
COUNTY OF ^COUNTY NAME )

I, ^REPORTER'S NAME, Official/Deputy Official Court Reporter in and for the ^### District Court of ^County Name County, Texas, do hereby certify that the following contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted, tendered in an offer of proof, or offered in evidence.

* I further certify that the total cost for the preparation of this Reporter's Record is $ _____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND on this, the ____ day of _____, _____.

_____
^REPORTER'S NAME, Texas CSR ^####
Expiration Date: ^##/##/##
Official Court Reporter, ^### District Court
^County Name County, Texas
^Address
^City, ^State ^Zip
^(###) ### - ####

(* To be included only in the final volume of the original of the Reporter's Record)

OFFICIAL REPORTER'S RECORD - CERTIFICATION PAGE FOR EXHIBITS - figure 6

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TRIAL COURT CAUSE NO(S). ^##-###, ^##-###

| | | |
|---|---|---|
| ^PLAINTIFF(S), | ) | IN THE DISTRICT COURT |
| | ) | |
| VS. | ) | ^COUNTY NAME COUNTY, TEXAS |
| | ) | |
| ^DEFENDANT(S) | ) | ^### JUDICIAL DISTRICT |

I, ^Reporter's Name, Official Court Reporter in and for the ^### District Court of ^County Name County, Texas, do hereby certify that the following exhibits constitute true and complete duplicates of the original exhibits, excluding physical evidence, admitted, tendered in an offer of proof, or offered in evidence during the ^Proceeding Name in the above-entitled and numbered cause as set out herein before the Honorable ^Judge's Name, Judge of the ^### District Court of ^County Name County, Texas, and a jury trial, beginning ^Month ^Date, ^Year.

* I further certify that the total cost for the preparation of this Reporter's Record is $ _____ and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND on this, the ____ day of _____, _____.

_____

^REPORTER'S NAME, Texas CSR ^####
Expiration Date: ^##/##/##
Official Court Reporter, ^### District Court
^County Name County, Texas
^Address
^City, ^State ^Zip
^(###) ### - ####

---

(* To be included only in the final volume of the original of the Reporter's Record)

Court of Appeals
First District of Texas
1307 San Jacinto Street, 10th Floor
Houston, Texas 77002-7006



Phone: 713-655-2700
Fax: 713-752-2304
www.1stcoa.courts.state.tx.us

June 2, 2004

The Hon. Nathan Hecht
Texas Supreme Court
P. O. Box 12248
Austin, Texas 78711-2248

Dear Justice Hecht:

This letter is written to request your consideration of (1) a resolution for the different requirements found in the current rules of civil and appellate procedure regarding certificates of service and (2) deleting the requirement for a certificate of conference on motions for rehearing filed in the appellate courts. Both suggested changes would benefit the practioners and the appellate courts.

First, the current version of Texas Rule of Appellate Procedure 9.5(d) requires a certificate of service to state: (1) the date of service; (2) the method of service–hand delivery, mail, commercial delivery service, or fax, or combination of these methods; (3) the name of each person served; (4) the address of each person served; and (5) if the person served is a party's attorney, the name of the party represented by that attorney. Texas Rule of Civil Procedure 21a only requires a statement that the requirements of the rule have been met. If the two rules had the same requirements, we believe that fewer non-conforming documents would be presented to the appellate courts.

Secondly, we would respectfully request that the Supreme Court revisit Texas Rule of Appellate Procedure 10.1(a)(5) (certificates of conference on motions). In our experience, requiring a certificate of conference on a motion for rehearing is unnecessary and unproductive.

I am available to discuss these suggestions with you and can be reached at 832-814-2011.

Sincerely,

Sherry Radack

Sherry Radack
Chief Justice

**MEMORANDUM**

To: Appellate Rules Subcommittee, Supreme Court Advisory Committee

From: William V. Dorsaneo, III

Re: Appellate Rule Changes Concerning Civil Practice and Remedies Code Section 51.014 (d)-(f).

Date: December 30, 2004

Here is a redrafted version of proposed changes to Appellate Rules 12.1 and 25. These redrafts are based primarily on the August 2004, transcript of the Advisory Committee and the votes taken at the meeting. Chairman Chip Babcock has also directed us to consider whether any other changes to the Texas Rules of Appellate Procedure are required by House Bill 4. I believe that Appellate Rule 29.5 (Further Proceedings in Trial Court) needs revision because of the changes made to Section 51.014 of the Civil Practice and Remedies Code. A copy of a proposed revision to Appellate Rule 29.5 is also included at the end of this memorandum. Would all of you please look at Justice Hecht's letter of June 16, 2003 to see if any other changes are needed? I hope everyone had a Merry Christmas and wish all of you a Happy New Year.

**Rule 12.1 Docketing the Case.** On receiving a copy of the notice on appeal, the petition for permission to appeal, the petition for review, the petition for discretionary review, the petition in an original proceeding, or a certified question, the appellate clerk must:

(a) endorse on the document the date of receipt;

(b) collect any filing fee;

(c) docket the case;

(d) notify all parties of the receipt of the document; and

(e) if the document filed is a petition for review filed in the Supreme Court, notify the court of appeals clerk of the filing of the petition.

## Rule 25. Perfecting Appeal

### 25.1 Civil Cases – Appeal As of Right.

**(a)** ***Notice of appeal.*** An appeal is perfected when a written notice of appeal is filed with the trial court clerk within the time allowed by Rule 26. If a notice of appeal is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court clerk, and the appellate clerk must immediately send the trial court clerk a copy of the notice.

**(b)** ***Jurisdiction of appellate court.*** The filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from. Any party's failure to take any other step required by these rules, including the failure of another party to perfect an appeal under (c), does not deprive the appellate court of jurisdiction but is ground only for the appellate court to act appropriately, including dismissing the appeal.

**(c)** ***Who must file notice.*** A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. Parties whose interests are aligned may file a joint notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause.

**(d)** **Contents of notice**. The notice of appeal must:

(1) identify the trial court and state the case's trial court number and style;

(2) state the date of the judgment or order appealed from;

(3) state that the party desires to appeal;

(4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case

the notice must state that the appeal is to either of those courts;

(5) state the name of each party filing the notice;

(6) in an accelerated appeal, state that the appeal is accelerated; and

(7) in a restricted appeal:

(A) state that the appellant is a party affected by the trial court's judgment but did not participate–either in person or through counsel–in the hearing that resulted in the judgment complained of;

(B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and

(C) be verified by the appellant if the appellant does not have counsel.

**(e)** ***Service of notice; copy filed with appellate court.*** The notice of appeal must be served on all parties to the trial court's final judgment or, in an interlocutory appeal, on all parties to the trial court proceeding. A copy of the notice of appeal must be filed with the appellate court clerk.

**(f)** ***Amending the notice.*** An amended notice of appeal correcting a defect or omission in an earlier filed notice may be filed in the appellate court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the appellate court and on such terms as the court may prescribe.

**(g)** ***Enforcement of judgment not suspended by appeal.*** The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless:

(1) the judgment is superseded in accordance with Rule 24, or

(2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.

**25.2 Civil Cases – Appeal By Permission**

Statute: entered
Rule: signed

**(a)** ***Petition for permission to appeal.***

(1) To request permission to appeal an interlocutory order ~~that is not otherwise appealable as of right in accordance with~~ Section 51.014(d)-(f) of the Civil Practice and Remedies Code, ~~any~~ a party to the trial court proceeding must file a petition for permission to appeal with the clerk of the appellate court that has appellate jurisdiction over the action.

Pursuant to

What about overlapping Juris?

(2) The petition must be filed not later than the 10th day after the date a district court signs a written order granting permission to appeal. The appellate court may extend the time to file the petition if within 15 days after the deadline for filing the petition, the petitioner:

same as 26.2. Repeated here HC "petition" language, not a notice of appeal

Some say statute limits jurisdiction

BUT if not timely, dismiss, get new order, perfect timely... why go through hassle?

(A) files the petition in the appellate court, and

(B) files in the appellate court a motion complying with Rule 10.5(b)

**(b)** ***Contents of petition; service; response or cross-petition***

(1) The petition must:

(A) identify the trial court and state the case's trial court number and style;

(B) give a complete list of all parties to the trial court proceeding and the names and addresses of all trial and

appellate counsel;

(C) identify the district court's order granting permission to appeal by stating the date of the order and attaching a copy of the order to the petition;

(D) state that all parties agree to the district court's order granting permission to appeal;

(E) identify the written order sought to be appealed by stating the date of the order and attaching a copy of the order to the petition;

(F) state concisely the issues or points presented, the facts necessary to understand the issues or points presented, the reasons why the order complained of involves a controlling question of law as to which there is substantial ground for difference of opinion, why an immediate appeal may materially advance the ultimate termination of the litigation, and the relief sought.

(2) The petition must be served on all parties to the trial court proceeding.

(3) If any party timely files a petition, any other party may file a response or a cross-petition not later than 7 days after the initial petition is served. Any response or cross-petition must be served on all parties to the trial court proceeding.

(c) ***Form of papers; number of copies:***

All papers must conform to Rule 9. Except by the appellate court's permission, a petition, response, or cross-petition may not exceed 10 pages, exclusive of pages containing the identity of parties and counsel, any table of contents, any index of authorities, the issues presented, the signature and proof of service and the accompanying documents required to be attached to the petition. An original and 3 copies must

be filed unless the appellate court requires a different number by local rule or by order in a particular case.

**(d)** ***Submission of petition; appellate court's order.*** Unless the court of appeals orders otherwise, the petition and response ~~or cross-petition~~ will be submitted to the appellate court without oral argument. A copy of the appellate court's order granting or denying permission to appeal, dismissing the petition, or otherwise directing the parties to take further action, must be served on all parties to the trial court proceedings. No motion for rehearing may be filed.

exclude cross only one briefing schedule

**(e)** ***Grant of petition; prosecution of appeal***

(1) Within 10 days after the entry of the appellate court's order granting permission to appeal, in order to perfect an appeal under these rules, any party to the trial court proceeding must file a notice of accelerated appeal with the district clerk and the clerk of the appellate court in conformity with Rule 25.1 together with a docketing statement as provided in Rule 32. The provisions of Rule 26.3 apply to such a notice.

(2) After perfection of the appeal, the appeal may ~~be prosecuted~~ proceed in the same manner as any other accelerated appeal.

[Alternative (e)]

**(e)** ***Grant of petition; prosecution of appeal***

(1) Within 10 days after the entry of the order granting permission to appeal, any party to the trial court proceeding must:

(A) file a notice of accelerated appeal with the district clerk to perfect the appeal,

(B) file with the clerk of the court of appeals a copy of the notice of accelerated appeal and a docketing statement in accordance with Rule 32, and

(C) pay all required fees

(2) After perfection of the appeal, the appeal may be prosecuted in the same manner as my other accelerated appeal.

**25.3 Criminal Cases.**

**Rule 29 Orders Pending Interlocutory Appeal in Civil Cases.**

**Rule 29.5 Further Proceedings in Trial Court.**

While an appeal from an interlocutory order is pending, the trial court retains jurisdiction of the case. Unless prohibited by statute, the trial court ~~and~~ may make further orders, including one dissolving the order appealed from and, unless prohibited by statute, the court may proceed with a trial on the merits. But the court must not make an order that:

(a) is inconsistent with any appellate court temporary order; or

(b) interferes with or impairs the jurisdiction of the appellate court or effectiveness of any relief sought or that may be granted on appeal

COMMENT to 2004 change. Rule 29.5 is amended to conform to Sections 51.014 (b), (c) and (e) of the Civil Practice and Remedies Code.