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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

INTRODUCTION TO THE 2013 EDITION

To the District Clerks of Texas:

The *District Clerk Procedure Manual* is a reference guide covering the various duties, responsibilities and procedures of District Clerks in Texas. The 2013 edition is published under the direction of Judy Speer, Assistant General Counsel for OCA, and with the assistance of the 2013-2014 District Clerk Procedure Manual Committee noted below:

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The 2013 edition provides updates which include changes from legislation passed during the 83rd Legislature. This manual contains references to the Texas Constitution, Texas statutes, and opinions of the Texas Attorney General. The statutes and constitutional provisions can be accessed on the Texas Legislature's website at www.statutes.legis.state.tx.us. Opinions of the Texas Attorney General can be accessed on the Texas Attorney General's website at: www.oag.state.tx.us/opin.

This manual is not published in hard copy, but is available at www.txcourts.gov/oca. Please feel free to contact Judy Speer by telephone at (512) 936-7061 or by e-mail at judy.speer@txcourts.gov with any questions concerning the manual.

David Slayton, Administrative Director

LEGAL SOURCE LEGEND

In this manual, references to specific legal sources are abbreviated as shown below:

ABBREVIATION	REFERENCE
A.G. Op.	Texas Attorney General Opinion
A.G. ORD	Texas Attorney General Open Records Decision
A.G. LO	Texas Attorney General Letter Opinion
Agric. Code	Texas Agriculture Code
Appr. Act	Appropriations Act
Alco. Bev.	Texas Alcoholic Beverage Code
Bus & Com. Code	Texas Business and Commerce Code
CCP	Texas Code of Criminal Procedures
Civ. Prac. & Rem. Code	Texas Civil Practice & Remedies Code
Const.	Constitution of the State of Texas
Elec. Code	Texas Election Code
Fam. Code	Texas Family Code
Gov't Code	Texas Government Code
Health & Safety Code	Texas Health & Safety Code
Hum. Res. Code	Texas Human Resources Code
Loc. Gov't Code	Texas Local Government Code
Nat. Res. Code	Texas Natural Resources Code
Occ. Code	Texas Occupations Code
OR	Texas Attorney General Open Records Letter Rulings

ABBREVIATION	REFERENCE
Parks & Wild. Code	**Texas Parks and Wildlife Code**
Penal Code	**Texas Penal Code**
Probate Code	**Texas Probate Code**
Prop. Code	**Texas Property Code**
TRAP	**Texas Rules of Appellate Procedure**
TRCP	**Texas Rules of Civil Procedure**
TAC	**Texas Administrative Code**
Tax Code	**Texas Tax Code**
Transp. Code	**Texas Transportation Code**
VTCA	**Vernon's Texas Codes Annotated**
VTCS	**Vernon's Annotated Texas Civil Statutes**
USCA	**United States Code Annotated**

CHAPTER 1

RESPONSIBILITIES OF THE DISTRICT CLERK'S OFFICE

A. OFFICE OF DISTRICT CLERK

Const. Art. 5, Sec. 9

The office of District Clerk has been included in every Texas Constitution since the Republic. Article 5, Section 9 of the Texas Constitution provides that there shall be a District Clerk in each county. The District Clerk is an elected official who serves a four-year term. If the office becomes vacant, a district court judge appoints a new Clerk, who holds office until is it filled by election.

The District Clerk provides support for the district courts in each county. The Clerk is custodian of all court pleadings and papers that are part of any cause of action, civil or criminal, in the district courts served by the Clerk. The District Clerk indexes and secures all court records, collects filing fees, and handles funds held in litigation and money awarded to minors.

B. BOND, OATH AND INSURANCE

Gov't Code Sec. 51.302(a) and (g)

Section 51.302 of the Texas Government Code requires a District Clerk to give a bond with two or more sureties or with a surety company authorized to do business in Texas as a surety company. The bond is given to ensure proper performance of the duties of the Clerk's office. The bond is payable to the Governor, and must be approved by the Commissioners Court. The bond amount is to be not less than 20 percent of the fees collected in any year of the term preceding the term of office for which the bond is given. However, it may not be less than $5,000 nor more than $100,000. Alternatively, the county may self-insure against losses that would be covered by the required bond.

Const. Art. 16, Sec. 1

Before entering upon the duties of office, a District Clerk must first subscribe to a statement of elected/appointed officer and then take the oath or affirmation of office. The statements of elected/appointed officer must be subscribed before the oath or affirmation of office is taken. The statement of elected/appointed officer is as follows:

Const. Art. 16, Sec. 1(b)

> "I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment of confirmation, whichever the case may be, so help me God."

Clerks may wish to use the form promulgated by the Secretary of State for the execution of the statement of elected/appointed official. The form, along with instructions, is available from the Secretary of State's website www.sos.state.tx.us/statdoc/forms/2201.pdf.

Const. Art. 16, Sec. 1(c)

District Clerks are to retain this signed statement with the official records of their office.

After subscribing to the statement of elected/appointed official, the District Clerk is to take the following Oath or Affirmation of Office:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

Const. Art. 16, Sec. 1(a)

Clerks may wish to use the form promulgated by the Secretary of State for the execution of the oath. The form, along with instructions, is available from the Secretary of State's website (www.sos.state.tx.us/statdoc/forms/2204.pdf.) Please note, however, that the oath is generally printed on the District Clerk's bond because the District Clerk is required to endorse his or her oath on the bond (unless the county chooses to self-insure against losses).

The District Clerk is to record his or her oath in the County Clerk's office.

Gov't Code Sec. 51.302(b)

The District Clerk must cover himself or herself and any Deputy Clerk against liabilities incurred through errors or omissions. The Clerk shall obtain an insurance policy or similar coverage from a governmental pool operating under Chapter 119 of the Local Government Code, or from a self-insurance fund or risk retention group created by one or more governmental units under Chapter 2259 of the Government Code. The amount of coverage must be equal to the maximum amount of fees collected in any year during the term of office immediately preceding the term for which coverage is obtained. The minimum amount of the policy is $20,000 and the maximum is $700,000; however, if the policy covers other county officials besides the District Clerk, the amount must be at least $1,000,000.

Gov't Code Sec. 51.302(c)

Coverage must also be provided to cover losses from burglary theft, robbery, counterfeit currency or destruction. The policy or other coverage may be obtained as detailed above. The amount of coverage must be at least $20,000 but not more than $700,000.

Gov't Code Sec. 51.302(d)

The Commissioners Court may establish a contingency fund to provide the required coverage described in the foregoing paragraphs if it is determined by the District Clerk that insurance coverage is unavailable at a reasonable cost. The Commissioners Court may set an additional filing fee in an amount not to exceed $5 for each suit filed to be collected by the District Clerk. The fee shall be paid into the contingency fund. When the total of the contingency fund reaches the required amount of coverage (see the two preceding paragraphs), the District Clerk shall stop collecting the additional fee.

Gov't Code Sec. 51.302(e)

The Commissioners Court shall pay the premiums on the bonds and insurance policies or other similar coverage required under this section from the county's general fund.

Gov't Code Sec. 51.302(f)

In addition, the Commissioners Court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.

Local Gov't Code Sec. 157.903

C. DEPUTY CLERKS

The District Clerk may appoint Deputy Clerks. Each appointment must be in writing under the hand and seal of the district court and must be recorded in the office of the County Clerk. A Deputy Clerk must take the oath prescribed for officers of this state.

Gov't Code Sec. 51.309(a)

Const. Art. 16, Sec. 1

A Deputy Clerk may perform in the name of the District Clerk all official acts of the office of District Clerk.

Gov't Code Sec. 51.309(b) and (c)

The District Clerk shall obtain a surety bond to cover a Deputy Clerk or a schedule surety bond or a blanket surety bond to cover more than one Deputy and all employees of the office. A Deputy Clerk and an employee must be covered on the same conditions and in the same amount as the District Clerk. The bond covering the Deputies and employees shall be made payable to the Governor for the use and benefit of the District Clerk. Alternatively, the county may self-insure against losses that would have been covered by the bond.

D. CONTINUING EDUCATION

Gov't Code Sec. 51.605

HB 3314 83rd Legislature

A District Clerk must complete continuing education courses regarding the performance of the Clerk's duties of office. A Clerk must complete 20 hours of instruction regarding the performance of the Clerk's duties of office before the first anniversary of the date the Clerk assumes those duties. After the first anniversary of the date a Clerk assumes the duties of office, the Clerk must each calendar year complete 20 hours of continuing education courses.

Deputy District Clerks are not required to complete continuing education.

E. NOTARIZING INSTRUMENTS

Gov't Code Sec. 406.014(a)

A Clerk notarizing instruments for the court does not have to keep a record of the notarization of each instrument, as does a notary public in other situations.

CHAPTER 2

JURY SELECTION AND ASSIGNMENT

A. THE GRAND JURY

Article 20.09 of the Texas Code of Criminal Procedure sets out the following duties for the grand jury: *CCP Art. 20.09*

The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person.

The bill of indictment returned by the grand jury initiates most of the criminal cases heard in district court.

There are two alternative methods of selecting potential grand jurors. The first method involves the use of grand jury commissioners. The second method allows for direct selection by the district judge. *CCP Art. 19.01*

1. Selection of Potential Grand Jurors by Grand Jury Commissioners

- The district judge appoints between three and five persons to serve as grand jury commissioners and notifies the Clerk of the persons selected. *CCP Art. 19.01(a)*

- Each grand jury commissioner is notified by the sheriff of this appointment, and when and where to appear. *CCP Art. 19.01(a)* *CCP Art. 19.02*

- At the appointed time, the commissioners meet and make a list of between 15 and 40 persons to be summoned as grand jurors for the relevant term of court. These persons should represent a broad cross-section of the county's population, considering the factors of race, sex and age. The qualifications of grand jurors are set out in Article 19.08. The commissioners place the list in an envelope and deliver the list to the district judge in open court. *CCP Art. 19.06* *CCP Art. 19.08* *CCP Art. 19.09*

- The judge will deliver the envelope to the District Clerk for safekeeping after the Clerk and each of his or her deputies has taken the following oath in open court: *CCP Art. 19.10* *CCP Art. 19.11*

  "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term." *CCP Art. 19.11*

- Each grand jury commissioner is to receive $10.00 for each day or part thereof served. *CCP Art. 19.01*

  The judge notifies the District Clerk as to the date the grand jury is to be impaneled and, within 30 days of that date, and not before, the Clerk will open the sealed envelope containing the list of grand jurors, make a certified copy of the list, and give the copy to the sheriff. At this point, the list of grand jurors becomes public information. *CCP Art. 19.13* *A.G. Op. GA-0422 (2006)*

- Each grand juror is notified by the sheriff to appear on the appointed date. The grand jurors must be served at least three days prior to the date they are impaneled. Neither the existence of nor the contents of a grand jury summons itself is confidential.

CCP Art. 19.14

In re Reed, 227 S.W.3d 273 (Tex.App.—San Antonio 2007, orig. proceeding).

- Traditionally, the District Clerk makes an entry in the court's minutes that reflects the names of the grand jury commissioners and states that they have carried out their responsibility to select potential grand jurors. Also, the District Clerk traditionally enters the name of each potential grand juror in the Grand Jury Docket which is the official record of grand jurors for each term of court.

2. Selection of Potential Grand Jurors by the District Judge

Instead of directing grand jury commissioners to select prospective grand jurors, the district judge may direct that 20 to 125 prospective grand jurors be selected and summoned in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts.

CCP Art. 19.01(b)

3. Choosing and Impaneling the Grand Jurors

- On the day of impanelment, if there are at least 14 potential grand jurors in attendance, the judge is to examine the qualifications of each prospective grand juror. The first 12 potential grand jurors to qualify (and who are not excused) are impaneled as the grand jury. In addition, the judge shall qualify and impanel not more than two alternate grand jurors. The remaining potential grand jurors are dismissed. An alternate serves upon the disqualification or unavailability of a grand juror during the term of the grand jury.

CCP Arts. 19.21-19.26

- The judge then appoints a foreman, administers the oath of office, and the grand jury is ready to begin its deliberations.

CCP Art. 19.34

- Traditionally, the District Clerk makes an entry in the minutes of the court stating that the grand jury has been impaneled, listing the members of the grand jury and identifying the foreman.

- Information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror, including the person's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, court personnel, or prosecuting attorney. However, on a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

CCP Art. 19.42

NOTE: *Grand jury lists contain only the names of grand jurors and prospective grand jurors. These lists are not confidential. Neither a Clerk nor a judge has any duty to keep a grand jury list confidential after the Clerk has opened the envelope containing the names of prospective grand jurors.*

A.G. Op. GA-0422 (2006)

4. Other Grand Jury Information

Upon voting to present an indictment and receiving an indictment prepared by the State's attorney, the grand jury, through its foreman, is to deliver the indictment to the judge or Clerk of the court. At least 9 members of the grand jury must be present. The fact of a presentment of indictment by a grand jury shall be entered upon the record of the court, if the defendant is in custody or under bond, noting briefly the style of the criminal action and the file number of the indictment and the defendant's name. If the defendant is not in custody or under bond at the time of the presentment of indictment, the entry in the record of the court relating to said indictment shall be delayed until such time as the capias is served and the defendant is placed in custody or under bond.

CCP Arts. 20.19--20.22

A capias shall be issued by the Clerk upon each indictment for felony presented. A capias or summons need not issue for a defendant in custody or under bond.

CCP Art. 23.02

The grand jury may adjourn itself at any time it is in session. If the adjournment is to last longer than three days, however, the judge must issue an order authorizing such action. The judge may reconvene the grand jury at any time during the term of the court as its services are needed. At the end of the court's term, the judge issues an order discharging the grand jury. As part of the District Clerk's duty to record the acts and proceedings of the district court, the Clerk should record all orders adjourning, reconvening, or discharging the grand jury in the court's minutes.

CCP Art. 20.08
CCP Art. 19.41
Gov't. Code Sec. 51.303

As noted above, some persons may be excused from grand jury service. The following qualified persons may be excused from grand jury service:

CCP Art. 19.25

- A person older than 70 years;
- A person responsible for the care of a child younger than 18 years;
- A student of a public or private secondary school;
- A person enrolled and in actual attendance at an institution of higher education; and
- Any other person that the court determines has a reasonable excuse from service.
- A member of U.S. military forces serving on active duty outside their county of residence.

B. THE PETIT JURY

1. Compiling the List of Potential Jurors for the Jury Wheel

The jury wheel must be reconstituted by using, as the source:

- The names of all persons on the current voter registration lists from all the precincts in the county; and

Gov't. Code Sec. 62.001(a)

- All names on a current list to be furnished by the Department of Public Safety, showing the citizens of the county who hold either a valid Texas driver's license or a valid personal identification card or certificate issued by the department, and who are not disqualified from jury service because of age, citizenship, or prior felony conviction.

If a written summons for jury service is returned with a notation from the U.S. Postal Service of a change of address, the District Clerk shall update the jury wheel card to reflect the person's new address.

Gov't Code Sec. 62.001(k)
Gov't Code Sec. 62.0146

Each year not later than the third Tuesday in November, the voter registrar of each county shall furnish to the Secretary of State a current voter registration list from all the precincts in the county. This list may exclude, at the option of the voter registrar, the names of persons on the suspense list maintained under Section 15.081, Election Code.

Gov't Code Sec. 62.001(c)
Gov't Code Sec. 62.001(d)

The District Clerk shall maintain a list of persons excused or disqualified from jury service because the person is not a resident of the county. On the third business day of each month, the Clerk sends a list of persons excused or disqualified in the last month because they are not county residents to the voter registrar. The voter registrar shall notify each person on the list that he or she is being placed on the county's suspense list of registered voters because of exemption or disqualification for jury service based on non-residence in the county. The voter registrar's notice must include information describing how the person may be removed from the suspense list and restored to regular voter registration in the county.

Gov't Code Sec. 62.114

On or before the first Monday in October of each year, the Department of Public Safety shall furnish its list to the Secretary of State.

Gov't Code Sec. 62.001(f)

The Secretary of State shall combine the voter registrar list with the Department of Public Safety list, eliminate duplicate names, and send the combined list to each county on or before December 31 of each year or as may be required under a plan developed in accordance with Government Code, Section 62.011, *Electronic or Mechanical Method of Selection*. The District Clerk of a county that has adopted a plan under Section 62.011 shall give the Secretary of State notice not later than the 90th day before the date the list is required. The list furnished to the county must be in a format, electronic or printed copy, as requested by the county and must be certified by the Secretary of State that the list contains the names required by law, eliminating duplications. The Secretary of State shall furnish the list free of charge.

Gov't Code Sec. 62.001(g)

If the Secretary of State is unable to provide the list because of the failure of the voter registrar to furnish the county voter registration list to the Secretary of State, the County Tax Assessor-Collector, Sheriff, County Clerk, and District Clerk shall meet at the county courthouse between January 1 and January 15 of the following year and shall reconstitute the jury wheel for the county, except as provided under a plan adopted under Section 62.011. The deadlines included in the plan control the preparation of the list and the reconstitution of the wheel. The Secretary of State shall send the list furnished by the Department of Public Safety to the voter registrar, who shall combine the lists for use as the juror source and certify the combined list as required of the Secretary of State.

Gov't Code Sec. 62.001(h)

The Commissioners Court may, instead of using the method provided by Subsections (c) through (h), Section 62.001, Government Code, contract with another governmental unit or a private person to combine the voter registration list with the list furnished by the Department of Public Safety.

Gov't Code Sec. 62.001(i)

In a county with a population of 250,000 or more, the names of persons who are summoned for jury service in the county and who appear for service must be removed from the jury wheel and may not be maintained in the jury wheel until the third anniversary of the date the person appeared for service or until the next date the jury wheel is reconstituted, whichever date occurs earlier. This subsection applies regardless

Gov't Code Sec. 62.001(j)

of whether the person served on a jury as a result of the summons.

When the jury wheel is reconstituted, the names should be transferred to small cards and placed in the jury wheel. In most counties, the computer services bureau that prints the voter registration list will also print the jury wheel cards. Otherwise, the District Clerk must manually prepare the cards. Many larger counties have discontinued the use of the jury wheel and instead keep the jury pool on a computer storage device. In counties using computerized jury selection, a plan may be prepared either for the use of the same list for the selection of persons for jury service until the list is exhausted or for the use of the same list for a specific period of time.

Gov't Code Sec. 62.002
Gov't Code Sec. 62.003
Gov't Code Sec. 62.011(b)(5)

If a written summons for jury service sent by a sheriff, constable or bailiff is undeliverable, the Clerk may remove from the jury wheel the card for the person summoned or remove the persons name from the record of names for selection of persons for jury service. If a written summons for jury service sent by a sheriff, constable or bailiff is returned with forwarding information by the United States Postal Service, the Clerk may update the jury wheel card to reflect the person's new address. When the jury wheel is reconstituted, the cards must reflect the updated address.

Gov't Code Secs. 62.0145 and 62.0146
Gov't Code Sec. 62.001(k)

2. Compiling the List of Potential Jurors by Electronic Means

The Commissioners Court of a county may, on the recommendation of a majority of the district and criminal district judges in that county, adopt a plan for selection of potential jurors through electronic or mechanical equipment instead of drawing names from a jury wheel.

Gov't Code Sec. 62.011(a)

The authorized plan must specify that the source of names for potential jurors selected electronically is the same as that for a jury wheel, and that the names of exempt persons will not be included. The District Clerk must be designated as the officer in charge, and his or her duties as such must be defined. The plan must provide for a fair, impartial, and objective method of selection. The plan must also provide that the method of selection will either use the same record of names until that record is exhausted, or that it will use the same record of names for a period of time specified in the plan.

Gov't Code Sec. 62.011(b)

The provisions of Chapter 62 of the Government Code relating to the selection of potential jurors by means of a jury wheel do not apply in a county that adopts a plan for selection of potential jurors by electronic means. However, the exemption provisions in the following section apply no matter which method of selecting potential jurors is used.

Gov't Code Sec. 62.011(c)

3. Exemptions from Jury Service - Names Removed from Jury Wheel

A person qualified to serve may establish an exemption from jury service if the person:

Gov't Code Sec. 62.106

- is over 70 years of age;
- has legal custody of a child under the age of 12 years if jury service by that person would necessitate leaving the child without adequate supervision;

HB 2717 (82nd Leg.)

- is a student of a public or private secondary school;
- is a person enrolled and in actual attendance at an institution of higher education;

- is summoned for service in a county with a population of at least 200,000 and has served as a petit juror during the preceding 24-month period (or the period of time specified in a plan for the electronic selection of jurors under Section 62.011, Government Code);
- is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is the primary caretaker of a person who is an invalid unable to care for himself; or
- is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. This exemption does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.
- is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence.

Gov't Code Secs. 62.107 and 62.108

A person who is over 70 years of age may establish a permanent exemption by furnishing a signed statement to the voter registrar of the county. A person summoned for jury service who files a statement with the Court Clerk under Section 62.107 of the Government Code claiming an exemption from jury service on the ground of being over 70 years of age may claim the permanent exemption by including in the statement a declaration that he or she desires a permanent exemption. Promptly after a statement claiming a permanent exemption is filed, the Clerk shall have a copy delivered to the voter registrar of the county and the name of the person claiming such exemption shall be removed from the jury wheel.

Gov't Code Sec. 62.109

The judge of a district court may, by order, permanently, or for a specified period, exempt from jury service a person with a physical or mental impairment or with an inability to comprehend or communicate the English language. A person requesting an exemption must submit an affidavit to the court that states the person's name and address along with the reason for and duration of the requested exemption. If the person is requesting an exemption due to physical or mental impairment, the person must attach a statement from a physician to the affidavit. Three separate affidavit forms are included in these materials:

form II-1—Request for Exemption due to Physical Impairment

form II-2—Request for Exemption due to Mental Impairment

form II-3—Request for Exemption due to English Language Inability

Promptly upon receipt of an order from the district judge exempting such person (form II-4), the District Clerk shall notify the voter registrar of the county of the name and address of the person and the duration of the exemption. The person shall not be summoned for jury service during the period for which he or she is exempted and the name of the person shall not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected, during the period for which the person is exempted.

4. Qualifications of Jurors

A person is qualified to serve as a juror if he or she: *Gov't Code Sec. 62.102*

- is at least 18 years of age;
- is a citizen of Texas and a resident of the county in which he or she is to serve as a juror;
- is qualified under the Constitution and laws to vote in the county in which he or she is to serve as a juror. (Note: the person does not need to be registered to vote in order to be "qualified" to vote);
- is of sound mind and good moral character;
- is able to read and write;
- has not served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court; and
- has not been convicted of, or be under indictment or other legal accusation for, misdemeanor theft or felony.

5. Postponement of Jury Service

A court may hear any reasonable sworn excuse of a prospective juror and, if the excuse is considered sufficient, shall release him or her entirely or until a later time. *Gov't Code Sec. 62.110*

A person summoned for jury service may request a postponement of his or her initial appearance for jury service. The person summoned requests the postponement by contacting the Clerk of the court in person, in writing or by telephone before the appearance date. The Clerk shall grant the postponement if no other postponement has been granted during the year preceding the appearance date AND a substitute date for appearance, within six months of the original appearance date, is set. *Gov't Code Sec. 62.0143 (a) and (b)*

A subsequent postponement may be requested, but will be granted only in the event of an unanticipated, extreme emergency (*e.g.*, a death in the family or a natural disaster). A substitute appearance date within six months must be determined before a second postponement will be granted. *Gov't Code Sec. 62.0142(c)*

It should be noted that Section 62.0144, Postponement of Jury Service in Certain Counties, applies to counties with a population of 1.4 million or more and which have at least two municipalities that each have a population of 300,000 or more. *Gov't Code Sec. 62.0144*

Also, SB 1195 (82nd Legislature) added a new Section 62.0147 to the Government Code. This new section is titled, Means Of Postponement Of Jury Service In Certain Counties, and it applies to counties that have a council of judges composed of the judges of the district courts and county courts at law and that have a designated jury duty court that addresses administrative matters related to jury service paid for by the county. *SB 1195 (82nd Leg.)* *Gov't Code Section 62.0147*

6. Selection of Jurors

One of the principal duties of the District Clerk is the selection and summoning of potential jurors. The procedure for doing so is as follows:

- The District Clerk determines how many jurors must be summoned initially to meet jury requirements.

- In counties using the jury wheel, the District Clerk and the sheriff or constable will draw the appropriate number of names from the wheel in the presence and under the direction of the district judge. *Gov't Code Sec. 62.004(a)*

- In counties using electronic or mechanical equipment for jury selection, the appropriate number of names are drawn by a random and impartial selection process. *Gov't Code Sec. 62.011 Martinez v. State, 507 S.W.2d 223, 226-27(Tex.Crim. App. 1974).*

- The District Clerk prepares a list of jurors selected (form II-5) and seals it in an envelope until the judge notifies the District Clerk of the date the prospective jurors are to be summoned. (Prospective jurors may not be summoned to appear for jury service on the date of the general election for state and county officers.) Upon such notification (which should be a reasonable time before the jurors are to be summoned), the District Clerk shall immediately note on the list the date the jurors are to be summoned and shall deliver the list to the sheriff for a district court jury. The sheriff shall then immediately notify the jurors on the list to appear for jury service on the date designated by the judge. *Gov't Code Sec. 62.004 Gov't Code Sec. 62.006 Gov't Code Sec. 62.007 and 62.008 Gov't Code Sec. 62.012 Gov't Code Sec. 62.0125 Gov't Code Sec. 62.013*

- In counties with a single district court and a single county court at law with concurrent jurisdiction, the judges may agree to a general panel of jurors for service in both courts. The names are drawn from the jury wheel, either weekly or in advance as determined by the judges. The sheriff notifies persons whose names are drawn to appear before the district judge for jury service. Once impaneled, the jurors constitute a general panel and may be used interchangeably by both courts. General panels with interchangeable jurors may not be used in a capital case or a mental health commitment case. *Gov't Code Sec. 62.0175*

- A county that uses electronic means of selection under an authorized plan may also, as part of the plan, allow summoned jurors to respond by computer (email), telephone to an automated system, or by appearing personally before the court. Information provided by a prospective juror regarding his or her qualification for jury service, his or her exemption from jury service, requests for postponement or excuse, and information on jury assignments may also be provided by these means. *Gov't Code Sec. 62.0111*

The county officer responsible for summoning jurors must purge the electronic mail addresses of prospective jurors, if such were provided in responding to the summons, no later than 30 days after the person is excused from jury service if he or she did not serve on a jury. If the prospective juror did serve, then the addresses are purged no later than 30 days after payment for jury service is sent by the county; if the jury pay was donated, then 30 days after such date as payment would have been sent.

- In a county that employs electronic or mechanical equipment as an aid in the selection of names of prospective jurors pursuant to section 62.011 of the Government Code and also uses interchangeable juries pursuant to section 62.016 of the Government Code, the District Clerk must be designated as the officer in charge of the selection process. Neither the Commissioners Court nor the district judges may delegate specific duties *AG Op. DM-34 (1991)*

relating to the selection of names of prospective jurors to the bailiff of the central jury room appointed pursuant to section 62.019 of the Government Code or to a jury administrator appointed by the district judges.

7. Mandatory Model Jury Summons/Questionnaire Promulgated

Gov't Code Secs. 62.0131 and 62.0132

HB 174 (82nd Leg.)

The Office of Court Administration (OCA) has developed a model for a uniform written jury summons. The Legislature has required all written jury summons to conform to this model. Similarly, OCA has developed a questionnaire to accompany the written jury summons. All written jury summons must include a copy of this questionnaire. The questionnaire must notify a person that if the person states that the person is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship. The model summons and questionnaire can be accessed at http://www.txcourts.gov/media/517192/MJS_Form.pdf.

8. Selection of Jury Panel

Gov't Code Sec. 62.015

On the day that jurors appear for jury service in district court, the judge, if jury trials have been set, shall select from the names on the jury lists a sufficient number of qualified jurors to serve on the jury panel. If the court at any time does not have a sufficient number of prospective jurors present whose names are on the jury lists and who are not excused by the judge from jury service, the judge shall order the sheriff or constable to summon additional prospective jurors to provide the requisite number of jurors for the panel. The names of additional jurors to be summoned by the sheriff or constable to fill a jury panel shall be drawn from the jury wheel under orders of the judge. Additional jurors summoned to fill a jury panel shall be discharged when their services are no longer required. The judge may order all or part of a panel of jurors to stand adjourned from jury service until a subsequent date in the term, but a juror may not be paid for the time that he stands adjourned from jury service. When impaneling the jury, the following procedures are required:

- All jurors summoned are gathered in the court or jury room for examination by the judge and the granting of excuses and exemptions from jury duty.

  Gov't Code Sec. 62.110
  Gov't Code Sec. 62.110
  CCP Art. 35.03

- The Clerk brings the jury cards (or a list of petit jurors) drawn from the wheel to the court or jury room and removes the names of absent jurors and those exempted or excused from duty.

- The exact size of the jury list may vary with the type of case. For non-capital criminal cases, at least 32 names should be drawn for each case (12 for the jury and 10 for each attorney to strike). For civil cases, at least 24 names should be drawn (12 for the jury and 6 for each attorney to strike). The Clerk may wish to add a few more names to allow for those who may be excused by the judge.

  CCP Art. 35.15

  TRCP 224

- The Clerk must randomly select the jurors by a computer or other process of random selection and must write or print the names, in the order selected, on the jury list. A copy of each jury list shall be prepared for the parties. (form II-6; form II-7). In addition to the jurors' names, the list should contain the file number of the case and the style of the case.

  CCP Art. 35.11

  TRCP 224

- Before the parties or their attorneys begin examination of the jurors whose names have so far been listed, the jurors on the panel shall be given the following oath:

Civil Cases: *TRCP 226*

> "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

Criminal Cases: *CCP Art. 35.02*

> "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror, so help you God."

- The final jury list will consist of the first 12 (or more, if alternate jurors are chosen) names on the jury list to survive challenges and strikes by the attorneys. This final list is filed in the case file folder as a part of the permanent record. (form II-8). *CCP Art. 35.26* *TRCP 234*

- The 12 jurors and any alternate jurors are officially impaneled when either the Clerk or the judge administers the following jurors oath:

Civil Cases:

> "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God." *TRCP 236*

Criminal Cases: *CCP Art. 35.22*

> "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God."

Alternate jurors in criminal cases are not to be discharged until after the jury has rendered a verdict on the guilt or innocence of the defendant and, if applicable, the amount of punishment. *CCP Art. 33.011(b)*

- A juror may be removed from a jury panel for cause or by peremptory challenge, and subsequently placed on another jury panel, except in counties having a population of 1,500,000 or more, in which case the juror must be dismissed. Upon dismissal, the juror should be paid and released. *Gov't Code Sec. 62.021*

9. Juror Reimbursement

Persons who report for jury service and discharge their daily duty are entitled to receive as reimbursement for travel and other expenses an amount not less than $6 for the first day or fraction of a first day, and not less than the amount set as state reimbursement to the county ($28 current amount) for each day or fraction of a day thereafter. The Commissioners Court sets the actual reimbursement rates in accordance with these statutory minimums. *Gov't Code Sec. 61.001(a),(b) SB 1- 82nd Legislature*

The County Treasurer may disburse the daily amount of reimbursement for jury service expenses by various methods of payment, including a payment system or method which does not utilize written warrants or checks. These methods of payment must be approved by the Commissioners Court and must be administered in accordance with the procedures established by the County Auditor or by the Chief Financial Officer, as applicable. The provisions concerning donation of juror pay apply to all methods of payment.

*Gov't Code Sec. 61.0015 *this amount may be changed*

The State of Texas reimburses counties $28* of the fee paid to jurors for each day following the first day. The Commissioners Court of a county entitled to this reimbursement may file a claim for reimbursement with the Comptroller. Generally, the District Clerk will need to provide the County Auditor or Treasurer with a report concerning jury service upon which the claim for reimbursement is based.

Gov't Code Sec. 61.001(f)

Local Gov't Code Sec. 113.048

If a check or other method of payment authorized under Section 113.048, Local Government Code, representing a reimbursement of expenses for a juror is not presented for payment or redeemed before the 90th day after it is issued:

- the instrument or other method of payment is forfeited and void; and
- the money represented by the instrument or other method of payment may be placed or retained in the county's jury fund, the county's general fund, or any other fund in which county funds can be legally placed, at the discretion of the Commissioners Court.

10. Donation of Juror Pay

Gov't Code Sec. 61.003

Each prospective juror reporting for jury service shall be personally provided a form letter that contains a brief description of the programs designated for donation and, when signed by the prospective juror, directs the County Treasurer to donate all, or a specific amount designated by the prospective juror, of the prospective juror's reimbursement for jury service to:

- the compensation to victims of crime fund under Subchapter B, Chapter 56, Code of Criminal Procedure;
- the child welfare board of the county appointed under Section 264.005, Family Code;
- any program selected by the Commissioners Court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence; or
- any other program approved by the Commissioners Court of the county, including a program established under Article 56.04(f), Code of Criminal Procedure, that offers psychological counseling to jurors in criminal cases involving graphic evidence or testimony.

Additionally, the County Treasurer or a designated county employee shall collect each form letter directing the County Treasurer to donate a prospective juror's reimbursement for jury service.

The form letter must include a blank in which a person may enter the amount of the daily reimbursement the juror wishes to donate. A sample "Juror Donation Form" (form II-9) is in the Forms Section. It will need to be modified to provide only the donation options/programs which are available in your county. Additionally, the

second page of the sample form provides samples of brief descriptions of programs,

11. Removing Names from the Jury Pool

Those persons convicted of felonies in district court and those found to be of unsound mind in probate court should have their names removed from the list of registered voters and thereby from the jury pool or wheel.

Gov't Code Sec. 62.102

Those persons over 70 years of age who have filed a statement claiming a permanent age exemption from jury duty should have their names removed from the jury pool.

Gov't Code Sec. 62.108

Additionally, those persons who, by order of the court, have been permanently, or for a specified period, excused from jury duty for physical or mental impairment or inability to communicate in the English language should have their names removed from the jury pool or otherwise not used in preparing the record of names from which a jury list is selected. (See "Exemptions from Jury Service" - this chapter.)

Gov't Code Sec. 62.001(b) Gov't Code Sec. 62.107 Gov't Code Sec. 62.109

Finally, those persons whose summons have been returned as undeliverable may be removed from the jury pool, provided the Clerk has not received any forwarding information from the United States Postal Service.

Gov't Code Secs. 62.0145, 62.0145(k), and 62.0146

H.B. 174 (82nd Legislature) has amended Sections 62.113 (b) and (c), Government Code, to require that on the third business day of each month, the Clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to the voter registrar of the county, the secretary of state, and to the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.

12. Excuse of Jurors

Generally, the court hears and determines excuses offered for not serving as a juror. However, under a plan approved by the Commissioners Court in the same manner as a plan approved for jury selection by electronic or mechanical method, in a case other than a capital felony case, a designee of the court (typically the Clerk) may hear and determine an excuse offered for not serving as a juror. If the court's designee deems the excuse sufficient, he or she may discharge the prospective juror or postpone the juror's service to a date specified by the court.

CCP Art. 35.03

In this regard, the Government Code provides that the court's designee may hear any reasonable sworn excuse of a prospective juror and release him or her from jury service until another day of the term.

Gov't Code Sec. 62.110

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.

Gov't Code Sec. 62.112

13. Computer or Telephone Response to Jury Summons

a. A plan authorized under Section 62.011 for the selection of names of prospective jurors may allow for a prospective juror to appear in response to a summons by:
   1. contacting the county officer responsible for summoning jurors by computer;
   2. calling an automated telephone system; or
   3. appearing before the court in person.

Gov't Code Sec. 62.0111

b. A plan adopted under Subsection (a) may allow for a prospective juror to provide information to the county officer responsible for summoning jurors or for the county officer to provide information to the prospective juror by computer or automated telephone system, including:
   1. information that permits the court to determine whether the prospective juror is qualified for jury service under Section 62.102;
   2. information that permits the court to determine whether the prospective juror is exempt from jury service under Section 62.106;
   3. submission of a request by the prospective juror for a postponement or excuse from jury service under Section 62.110;
   4. information for jury assignment under Section 62.016, including:
      A. the prospective juror's postponement status;
      B. if the prospective juror could potentially serve on a jury in a justice court, the residency of the prospective juror; and
      C. if the prospective juror could potentially serve on a jury in a criminal matter, whether the prospective juror has been convicted of a misdemeanor theft;
   5. completion and submission by the prospective juror of the written jury summons questionnaire under Section 62.0132;
   6. the prospective juror's electronic mail address; and
   7. notification to the prospective juror by electronic mail of:
      A. whether the prospective juror is qualified for jury service;
      B. the status of the exemption, postponement, or judicial excuse request of the prospective juror; or
      C. whether the prospective juror has been assigned to a jury panel.

c. The county officer responsible for summoning jurors shall purge the electronic mail address of a prospective juror collected under Subsection (b):
   1. if the prospective juror serves on a jury, not later than the 30th day after the date that:
      A. the county sends the person payment for jury service; or
      B. the county would otherwise send the person payment for jury service, if the person has donated the payment under Section 61.003; or
   2. if the prospective juror does not serve on a jury, not later than the 30th day after the date that the court releases the person from jury service.

14. Uniform Jury Handbook

The State Bar of Texas publishes a uniform jury handbook that:

- informs jurors in lay terminology of the duties and responsibilities of a juror; *Gov't. Code Sec. 23.202(a)*
- explains basic trial procedures and legal terminology; and
- provides other practical information relating to jury service.

The State Bar shall review and update the uniform jury handbook annually. A Spanish language version of the handbook shall be published and made available.

The State Bar shall distribute copies of the uniform jury handbook to each trial court of this State in sufficient numbers to meet the requirements of this subchapter.

Gov't Code Sec. 23.202(b)

The Clerk of a trial court shall provide each juror in a civil or criminal case with a copy of the uniform jury handbook. The juror shall read the handbook before the juror begins jury service

Gov't Code Sec. 23.203(a)

The handbook is a public document. The State Bar or trial court may distribute the handbook to promote the public's understanding of jury service.

Gov't Code Sec. 23.203(b)

The handbook may be viewed on the State Bar's website: http://www.texasbar.com/AM/Template.cfm?Section=Jury_Information&Template=/CM/ContentDisplay.cfm&ContentID=23549. A copy of the publication may be obtained by calling the State Bar at 800/204-2222, ext. 2610.

Gov't Code Sec. 23.203(c)

15. Jury Fees

The District Clerk shall collect a $30 jury fee for each civil case in which a person applies for a jury trial. The $30 fee includes the $10 jury fee required by Texas Rule of Civil Procedure 216. At least $10 of the fee must be paid not less than 30 days before the date set for trial; the remaining $20 must be paid no later than 10 days before trial is scheduled.

Gov't Code Sec. 51.604

CHAPTER 3

CASE PROCESSING AND COSTS OF COURT

A. JUDICIAL POWER

The judicial power of this State is vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts.

Const. Art. 5, Sec. 1

The district court is the highest level of trial court of original jurisdiction in the Texas judicial system. In general, the district court will hear the more serious criminal cases, the more serious civil cases, and most cases dealing with juveniles and domestic relations.

CCP Art. 4.05

The role of the District Clerk in supporting the court system is critical to its smooth operation. Thus, the importance of proper and competent court support cannot be overstated.

B. OVERVIEW OF DISTRICT COURT JURISDICTION

District court jurisdiction consists of exclusive, appellate and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by the Texas Constitution or other law on some other court, tribunal, or administrative body. District court judges have the power to issue writs necessary to enforce their jurisdiction. The district court has appellate jurisdiction and general supervisory control over the county commissioners court, with such exceptions and under such regulations as may be prescribed by law.

Const. Art. 5, Sec. 8

District courts are established by the State legislature. These courts have both civil and criminal jurisdiction.

The Texas Constitution also provides that:

Const. Art. 5, Sec. 9

There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election.

NOTE: In 2013 HB 1875 from the 83rd Legislature amended Section 24.003 of the Government Code to provide that a district judge may not transfer any civil or criminal case or proceeding to the docket of another district court in the same county without the consent of the judge of the court to which it is transferred. The bill also excludes suits affecting the parent-child relationship in which a court has continuing, exclusive jurisdiction from the types of cases that a district judge is authorized to transfer.

HB 1875 (83rd Leg) Gov't Code Sec. 24.003

1. Criminal Jurisdiction

The district court hears all felony criminal cases and all misdemeanors involving official misconduct. *CCP Art. 4.05*

In some counties, where the county court judge is not a licensed attorney, certain misdemeanor cases may be transferred to district court. In such cases, the District Clerk processes misdemeanor cases as well as felonies. In this event, the District Clerk should refer to the chapter entitled "Supporting the Criminal Courts" in the County Clerk Procedure Manual, a copy of which is online on the State Office of Court Administration's website. *CCP Art. 4.17*

Felonies are classified according to the relative seriousness of the offense into five categories: (1) capital felonies; (2) felonies of the first degree; (3) felonies of the second degree; (4) felonies of the third degree; and (5) state jail felonies. An offense designated a felony in the Penal Code without specification as to category is a state jail felony. *Penal Code Sec. 12.04*

Felonies are the most serious of crimes. Punishment may include imprisonment, confinement in a state jail facility, and, under certain circumstances, death by lethal injection. The specific penalties for each felony classification are enumerated in Chapter 12 of the Texas Penal Code.

2. Civil Jurisdiction

Civil proceedings, unlike criminal cases, pertain to disputes between private parties. The legal definition of a civil case is "a personal action which is instituted to compel payment or the doing of some other thing which is purely civil." The purpose of most civil cases is to obtain a judgment for money, but civil cases are also filed to attempt to compel or to enjoin some action.

In general, the district court has jurisdiction in any civil case. District courts have concurrent (shared) jurisdiction with county courts when the disputed amount is more than $500 and less than $5,000. District courts and county courts at law have concurrent jurisdiction when the amount in controversy is more than $500 and less than $200,000. HB 79 (82nd Legislature) increased the jurisdictional monetary limit for statutory county courts to $200,000 if their previous limit was $100,000. There are a number of statutory county courts whose jurisdictional monetary limit was higher than $200,000. These courts retain their higher limit. In these instances of concurrent jurisdiction, the plaintiff has the option to file in any court with jurisdiction. *Gov't Code Sec. 24.007 Gov't Code Sec. 24.008 Gov't Code Sec. 25.0003(c)(1) Gov't Code Sec. 26.042(d)*

District courts will hear probate cases typically only when the matter is contested. Please see Section E-1, this chapter, for more information on probate courts. *Probate Code Sec. 5(b)*

Other kinds of civil cases commonly filed in district court include:

- Debt and sequestration
- Suits for damages
- Injunctions
- Title and possession
- Removal of cloud on title to real property
- Breach of warranty
- Promissory note
- Suit on contract

- Appeals from administrative law decisions of State agencies, commissions and boards
- Partition suits
- Will contests
- Suit on insurance policy
- Bond forfeiture

3. Domestic Relations

The district court is granted jurisdiction over most family law matters and Juvenile Law. See "Family Law," Chapter X and "Juvenile Law," Chapter XI for a detailed discussion.

4. Specialized District Courts

While all district courts are courts of general trial jurisdiction, legislation creating some district courts specifies that they hear only certain kinds of cases or are to give preference to certain cases. These courts generally will be required to give preference to family, criminal, or civil law matters.

In some counties with more than one district court, the courts may specialize by agreement of the judges even though they are all courts of general jurisdiction. In such cases, the Clerks should be familiar with the specialization of the various courts to ensure that cases are filed properly.

Gov't Code Secs. 24.101-24.920

C. CRIMINAL PROCESS

1. Examining Trial

The accused in any felony case has the right to an examining trial before indictment in the county having jurisdiction of the offense. The purpose of the examining trial is to determine whether there is probable cause to charge the accused with an offense. Examining trials are conducted by magistrates. Examining trials, however, are not commonly used in Texas.

CCP Art. 16.01

After an examining trial, if the magistrate determines that probable cause for prosecution exists, the arresting officer will swear out an affidavit (complaint) alleging that a crime has been committed. The magistrate will also determine if the accused is entitled to bail and will set the amount.

The magistrate will then forward the affidavit, the warrant, and the bond (if any) to the Clerk who maintains a file for examining trial cases. The examining trial files may be used by the district attorney in preparing an indictment against the defendant. After indictment, the accused no longer has a right to an examining trial.

2. Initial Proceedings

There are three methods of bringing a criminal case before the district court: (1) indictment by the grand jury; (2) waiver of indictment for a noncapital felony; and (3) transfer (change of venue) from another district court.

The most common method of bringing a case before the district court is indictment by the grand jury. The district attorney prepares a bill of indictment for any case which he or she intends to prosecute. The grand jury will examine each bill and determine whether it is a "true" bill or a "no" bill. No bills are not prosecuted. True bills are forwarded to the District Clerk to be filed as criminal cases.

CCP Art. 21.01

The grand jury may also return a direct indictment (not prepared by the district attorney) as a product of its own investigation; however, this is not a common practice.

The Code of Criminal Procedure provides for waiver of indictment for any offense other than a capital felony. A defendant who has been accused of a felony but who has not been indicted may waive such indictment in hopes of going to trial at an earlier date. Because the defendant cannot get a trial before indictment, he may wish to sign the waiver rather than wait until the grand jury meets again. The waiver is often (but not necessarily) accompanied by a plea of guilty.

CCP Art. 1.141

Occasionally, a defendant will request a change of venue, or the judge on his own motion may order the transfer of a case from one district court to another. If the judge grants the change, he will issue an order transferring the case to another court. This order becomes authorization for the Clerk of the new court to file the case and no additional indictment or waiver is necessary.

CCP Art 31.01-31.09

3. Initial Filing Procedures

Before a case may be heard in district court, it must be filed for record in the District Clerk's office. The following initial procedures must be completed before proceedings can begin.

- If the defendant is in custody or under bond, the fact of a presentment of indictment by a grand jury is entered upon the minutes of the court, noting briefly the style of the criminal action, the file number of the indictment, and the defendant's name.

  CCP Art. 20.22

- If the defendant is not in custody or under bond at the time of the presentment of the indictment, the entry in the minutes of the court relating to said indictment is delayed until such time as the capias (arrest warrant) is served and the defendant is placed in custody or under bond. The indictment may not be made public until the defendant is placed in custody or under bond.

  HB 1573 (82nd Leg.)

- If an information is to be filed rather than an indictment, an affidavit must be made by a credible person charging the defendant with an offense. The affidavit may be sworn to before the district or county attorney, or any officer authorized by law to administer oaths. The affidavit must be filed with the information. The Clerk can then issue criminal processes.

  CCP Art. 21.20
  CCP Art. 21.22

- On transfers to inferior courts, the Clerk delivers all indictments with all papers and records to that court or justice. Such records are accompanied by a certified copy of all proceedings in the district court and a bill of costs that have accrued in district court.

  CCP Art. 21.28

- A capias is issued by the Clerk upon each felony indictment, after bail has been set or denied by the judge. (See "Issuance of Process," Chapter IV.) The capias is given to the sheriff in the county where the defendant resides for his execution and return but may be issued to as many counties as the district attorney may direct. A capias need not issue for a defendant in custody or under bond.

  CCP Art. 23.03

- Upon the request of the attorney representing the State, a summons instead of a capias is issued. (A summons must contain specific language in both English and Spanish.) If the defendant then fails to

appear, a capias must be issued.

- The Clerk must endorse upon the capias the amount of bail set by the court. *CCP Art. 23.12*
- The Clerk also provides the sheriff a certified copy of the indictment and precept to serve the indictment to accompany the capias. This will officially inform the defendant as to the charges brought against him.

NOTE: *The Clerk must keep a record of criminal cases. (See "Record of Criminal Actions," this section.* *CCP Art. 33.07*

The case is now filed in the district court and is ready for further proceedings. The Clerk's role is a passive one at this stage of the process. The next action will be triggered by the prosecutor, defense attorney, or judge. Some cases will be filed and disposed of in the same day, while others will stay pending for indefinite periods of time.

4. Post-Filing Procedures

a. General Provisions

As a case moves toward disposition, numerous and varied documents and instruments will be filed as a part of the permanent record. *Gov't Code Sec. 51.303*

The Clerk must file, record, and safely preserve any item that has received the consideration of the court.

A list of common instruments include:

- Order of arraignment
- Waiver of jury trial
- Application for community supervision
- Stipulation of testimony
- Judgment
- Order granting community supervision
- Sentence
- Order of dismissal
- Motion by counsel

NOTE: *In criminal cases, a judge may "sign" a document by allowing another person to place a mark on a document that constitutes the judge's approval of a document, only if the other person does so in the presence of and under the direction of the judge. A judge may also "sign" an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in a computer system.* *AG Op. JM-373 (1985)* *AG L.O. 97-082 (1997)*

b. Filing and Disposition Duties

Proper filing procedures for all documents presented to the Clerk are as follows: *Gov't Code Sec. 51.303*

- File-mark the document to show the date and time received. Note the case number on the document if it does not already appear. *CCP Art. 2.21*
- The Clerk must accept and file electronic documents and digital

multimedia evidence from the defendant if the Clerk accepts such documents and evidence from an attorney representing the state. A District Clerk is exempt from this requirement if the electronic filing system used by the Clerk for accepting electronic documents or electronic digital media from an attorney representing the state does not have the capability of accepting electronic filings from a defendant and the system was established or procured before June 1, 2009. If the system is substantially upgraded or is replaced with a new system, the exemption is no longer applicable.

SB 1228 (82nd Leg.)

- If the document is an order, judgment, sentence, or dismissal, record it in the criminal minutes and note the volume and page number(s) in the index, file record, and the judge's docket sheet.

CCP Art. 33.07

- Place the document in the permanent file folder and note the type of document and the date filed on the outside of the jacket or folder.

It is the Clerk's duty to dispose of all eligible exhibits at the conclusion of a criminal proceeding. Eligible exhibits are those filed with the Clerk except:

CCP Art. 2.21(d)
CCP Art. 2.21(e)

- Firearms and contraband
- Exhibits that the court has ordered to be returned to its owner
- Exhibits that are also exhibits in another pending criminal action

The Clerk may dispose of exhibits on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is five years or less. The Clerk must wait until the second anniversary of the date on which the conviction becomes final when the case is a non-capital felony for which the sentence is greater than five years to dispose of the exhibits. HB 1728 from the 83rd Legislature amended Article 2.21(e) of the Code of Criminal Procedure by adding two additional circumstances which allow the Clerk to dispose of exhibits. The Clerk may now also dispose of an eligible exhibit on or after the first anniversary of the date of the acquittal of a defendant or on or after the first anniversary of the date of the death of a defendant.

CCP Art. 2.21(e)

HB 1728 (83rd Leg.)

Subject to Subsections (g), (h), (i), and (j) of Article 2.21, Code of Criminal Procedure, a Clerk may dispose of an eligible exhibit or may deliver the eligible exhibit to the county purchasing agent for disposal as surplus or salvage property under Section 263.152, Local Government Code, if on the date provided by Subsection (e) the Clerk has not received a request for the exhibit from either the attorney representing the State in the case or the attorney representing the defendant. Notwithstanding Section 263.156, Local Government Code, or any other law, the commissioners court shall remit 50 percent of any proceeds of the disposal of an eligible exhibit as surplus or salvage property as described by Subsection (f), less the reasonable expense of keeping the exhibit before disposal and the costs of that disposal, to each of the following: (1) the county treasury, to be used only to defray the costs incurred by the District Clerk of the county for the management, maintenance, or destruction of eligible exhibits in the county and (2) the state treasury to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56

CCP Art. 2.21(f)

A Clerk in a county with a population of less than 2 million must provide written notice by mail to the attorney representing the State in the case and the attorney representing the defendant before disposing of an eligible exhibit. The notice must describe the eligible exhibit; give the name and address of the court holding the

CCP Art. 2.21(g)
CCP Art. 2.21(h)
HB 2702

exhibit; and state that the eligible exhibit will be disposed of unless a written request is received by the Clerk before the 31st day after the date of the notice. *(82nd Leg.)*

If a request is not received by a Clerk covered by Subsection (g) before the 31st day after the date of notice, the Clerk may dispose of the eligible exhibit in the manner permitted by this article, including the delivery of the eligible exhibit for disposal as surplus or salvage property as described in Subsection (f). If a request is timely received, the Clerk delivers the eligible exhibit to the person making the request, provided the court determines the requestor is the owner of the eligible exhibit. *CCP Art. 2.21(i)* *CCP Art. 2.21(j)*

Firearms and contraband are not eligible exhibits. Any firearm or contraband received by a court as an exhibit in a criminal case must be placed in the hands of the sheriff or, in a county with a population of 500,000 or more, the law enforcement agency that collected, seized, or took possession of the firearm or contraband, or produced the firearm or contraband at the proceeding for safekeeping during and after the proceeding. The sheriff or law enforcement agency is required to receive and hold exhibits consisting of firearms or contraband and release them only to persons authorized by the court in which such exhibits have been received, or dispose of them as provided by Chapter 18 of the Code of Criminal Procedure. *CCP Art. 2.21(b)(c)*

c. Felony Judgments

The Office of Court Administration (OCA) is required to promulgate a standardized felony judgment form. OCA has published the following seven standardized forms for use in particular situations: *CCP Art. 42.01, Sec. 4* *Art. 42.09, Sec. 8(a)(1) and (2)*

1. Judgment of Acquittal by Court
2. Judgment of Acquittal by Jury
3. Judgment of Conviction by Court
4. Judgment of Conviction by Jury
5. Order of Deferred Adjudication
6. Judgment Adjudicating Guilt
7. Judgment Revoking Community Supervision

A court entering a felony judgment is required to use the standardized forms. The standardized forms, along with a list containing special orders that may be inserted into the forms as needed, can be accessed through the above hyperlink (click on the underlined text), or directly from the website at http://www.txcourts.gov/rules-forms/forms.aspx

d. Fingerprint on Judgment, Order of Probation or Docket Sheet

A defendant who is convicted of an offense, felony or misdemeanor that is punishable by confinement in jail must place a thumbprint or fingerprint on the judgment or the docket sheet in the case. A defendant who is placed on probation (community release) under Article 42.12, Section 5, Code of Criminal Procedure, must place a thumbprint or fingerprint on the order placing the defendant on probation. The thumbprint or fingerprint is taken by the Clerk, bailiff or other qualified person, using either the ink-rolled method or a live-scanning device. *CCP Art. 38.33, Sec. 1*

Article 38.33(1) prescribes that the defendant's right thumbprint be used. If defendant does not have a right thumb, then the left thumbprint is taken. If defendant does not have a right or a left thumb, then the index fingerprint is used. The document on which the thumbprint or fingerprint is placed must contain a statement that

describes from which thumb or finger the print was taken.

5. Record of Criminal Actions

CCP Art. 33.07

The Code of Criminal Procedure requires that a court with criminal jurisdiction maintain a record of each criminal action. This ensures an accurate account of cases in progress and, properly maintained, it becomes a master reference guide to all aspects of a case.

The record should initially include:

- Style and file number of the case
- Nature of the offense
- Names of counsel
- Date of filing

As the case progresses, each item or occurrence and the date of such item or occurrence should be noted in the record. Some examples are:

- Processes issued by the Clerk and date of issuance
- Returns of processes and date of return
- Instruments filed for record and date of filing
- Orders, judgments, and verdicts, and date given
- Commitments and releases, and date of action
- Exhibits received

Also, a portion of the record should be devoted to accounting for court costs and fines as they are incurred, as well as for receipts of payments and disbursements of costs and fines to the various county offices. Thus, a properly maintained record also establishes a complete accounting record for each case.

AG Op. JM-358 (1985)

Most Clerks are in the habit of using the outside of each case file to duplicate the entries made to the record. This is a very convenient way for judges and attorneys to quickly review the case activity before hearings and trial. The Attorney General has stated that a District Clerk may use the case file jacket to maintain a record without maintaining the same information on a separate sheet inside the jacket.

The criminal actions record serves two functions. It serves as official notification to the judge that a case has been filed and is to be decided in his court. It gives the judge preliminary information about the offense, such as the nature of the offense and the identity of the attorneys in the case.

Second, it is a record of important events that happen in the courtroom. For each case, the judge takes minutes of the proceedings and records all orders, judgments, verdicts, sentences and fines that are handed down.

While not required by code, many Clerks also prepare a separate record, or docket, for the judge at the time a case is first filed. This is commonly referred to as the "Judge's Docket." While it can be formatted to meet the needs of the individual court, the following information shall be included:

- Case number
- Date of filing
- Names of parties (style of the case is always "The State of Texas v. [defendant]")

- Attorneys of record
- Nature of the offense
- Orders of the court

The last item is the judge's own notes and should include the order and date of the order. The volume and page number in the criminal minutes are added by the Clerk as the minutes are recorded.

At the termination of each case, the Clerk should examine the contents of the case jacket to insure that all instruments that have been filed for record are present. The Clerk should also check to be certain that all instruments to be recorded in the criminal minutes have been so recorded and indexed.

6. Bonds

At the time a criminal case is filed with the Clerk, it is likely that the defendant will already have been arrested, jailed and released on bond by a magistrate. In such cases, the Clerk should receive the bond issued by the magistrate and file the bond in the case file jacket.

At other times, the defendant will be in jail or arrested on the Clerk's capias and will desire to make bond after the case is filed with the Clerk. Only the judge can set the amount of bond and authorize its issuance, but the Clerk should receive the bond for safekeeping.

CCP Art. 17.08

There are three types of bond: personal bond, surety bond and cash bond. All three types must contain the following requisites:

- The bond is payable to the State of Texas.
- The defendant and any sureties bind themselves that the defendant will appear before the proper court and answer the accusations against him.
- The bond must state whether the defendant is charged with a felony or a misdemeanor.
- The defendant and any sureties must sign the bond and provide their mailing address(es).
- The bond must state the time, place, and court before which the defendant is to appear, and that the defendant is bound to appear at subsequent times and places as may be required.
- The bond is conditioned upon the principal and any sureties paying necessary and reasonable expenses incurred in rearresting the defendant should he fail to appear.

CCP Art. 17.04

A personal bond is essentially the defendant's word that he will appear as required. The term "own recognizance" is often used in these instances. In addition to the requirements of Article 17.08, Code of Criminal Procedure, a personal bond must also show the defendant's place of employment; date and place of birth; height, weight, hair and eye color; driver's license number and state of issuance; and nearest relative's name and address. The defendant must also sign an oath swearing he will appear as required.

CCP Art. 17.11

A surety bond is one in which a third party has pledged assets as security for the bond. The party putting up the security is the surety. The security must be worth at least twice the amount of the bond, exclusive of property exempted from execution (e.g., homestead property) and of debts and encumbrances. The surety must be a resident of Texas. A person who has signed as a surety on a bail bond and is in default

shall be thereafter disqualified to sign as a surety so long as the person is in default on the bond. It shall be the duty of the Clerk of the court where the surety is in default on a fail bond to notify in writing the sheriff, chief of police, or other peace officer of the default.

HB 1562 (83rd Leg.)

HB 1562 from the 83rd Legislature amended Article 17.11. If a bail bond is taken for an offense other than a Class C misdemeanor, the Clerk of the court where the surety is in default on the bond shall send notice of the default by certified mail to the last known address of the surety. A surety is considered to be in default from the time execution may be issued on a final judgment in a bond forfeiture proceeding under the Texas Rules of Civil Procedure, unless the final judgment is superseded by the posting of a supersedeas bond.

CCP Art. 17.02

The final type of bond is cash bond, where cash in the amount of the bond is posted. The Clerk receives and holds the cash in safekeeping.

The sheriff may deliver the bond to the Clerk, or the defendant may be brought before the Clerk, who will complete the bond form according to the judge's instructions. In either case, the Clerk collects the money, issues a receipt, and posts the amount in the criminal record as with other court costs. The judge then signs the bond. The bond is processed and filed in the case folder.

When the case has been disposed of, the judge must enter an order authorizing the Clerk to refund the cash. The order will state to whom the refund is to be made and in what amount.

HB 1658 (82nd Leg.)

The Code of Criminal Procedure specifies that any cash funds be refunded to the defendant. However, HB 1658 (82nd Legislature) amended Article 17.02 of the Code of Criminal Procedure to clarify situations in which a third party posted the cash bond on behalf of the defendant. After the defendant complies with the conditions of the defendant's bond, and on order of the court, the cash funds deposited are refunded to any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant, or to the defendant if no other person is able to produce a receipt for the funds. Since the statute declares that the amount of money to be refunded is "the amount reflected on the face of the receipt," the statute now conflicts with Section 117.055 of the Local Government Code. That statute requires Clerks to retain the lesser of $50 or 5% of the cash bond amount. Pursuant to the analysis contained in Attorney General Opinion No. JC-0163 from 1999, the latest statute in time controls. Thus, the recently amended Article 17.02 of the Code of Criminal Procedure will control and Clerks cannot continue to withhold the $50 or 5%.

7. Criminal Court Docket Notice

CCP Art. 17.085 HB 1573 (82nd Leg.)

The Clerk must provide online access to that court's record of criminal cases or post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the court notifies the Clerk of the setting.

8. Bond Forfeiture

CCP Art. 22.01

As a condition of being released on bond, a defendant promises to appear in court at a particular time. If the defendant does not appear as promised, the defendant's name is to be called distinctly at the courthouse door (or outside the door of the relevant courtroom). If the defendant does not appear within a reasonable time after his or her name is called, then certain actions are initiated that can lead to the forfeiture

of the defendant's bond.

CCP Art. 22.02

Upon the failure of a defendant to appear in court, the judge shall enter a judgment that the State of Texas recover the amount of the bond from the defendant. This judgment, known as a "judgment nisi," is not a final judgment but rather an interlocutory, conditional judgment. The judgment nisi will be made final unless good cause is shown for why the defendant did not appear in court. The Clerk should record the judgment nisi in the criminal minutes of the court.

AG Op. GA-0486 (2006)

Ranger Insurance Co. v. State, 312 S. W. 3d 266 (Tex. App. –Dallas 2010, no pet.)

The judge's signing of the judgment nisi effectively serves to initiate a criminal action (albeit one governed by the Texas Rules of Civil Procedure) in which the State attempts to obtain a final judgment forfeiting the defendant's bond to the State. For some time, a question has existed as to whether civil filing fees should be assessed in bond forfeiture cases. This question appears to have been resolved in the recent case of Ranger Insurance Co. v. State in which the Fifth Court of Appeals in Dallas held that "at the trial court level, civil costs of court may be collected in bond forfeiture proceedings."

CCP Art. 22.03
CCP Art. 22.04

The Clerk is to issue citation (with a copy of the forfeited bond attached) notifying the defendant's surety or sureties that the bond has been provisionally forfeited and requiring the sureties to appear and show cause as to why the judgment nisi should not be made final. A citation to a surety who is an individual is to be served to the individual at the address shown on the face of the bond. A citation to a surety that is a corporation is to be served to the attorney designated for service of process by the corporation. A surety may waive service of citation by filing a written waiver with the Clerk. By the same method, a surety may designate a person other than the surety or the surety's attorney to receive service of citation.

CCP Art. 22.05

Notice to the defendant is required only if he or she has provided a contact address on the bond. Notice to the defendant is to be made by regular United State mail. A copy of the judgment nisi must be attached to the citation.

Please note that the judgment nisi does not serve to do away with the underlying criminal charge. Criminal proceedings are resumed after the defendant is apprehended.

AG Op. JM-779 (1987)

> ***NOTE:*** *A district attorney does not have to pay a fee to the County Clerk to file an abstract of judgment issued against a principal or surety in a bond forfeiture proceeding.*

a. Release of Surety

CCP Art. 17.19

A surety on a bond may wish to be released from his or her responsibility if he feels that the defendant may not appear as specified.

The surety must file an affidavit with the Clerk that gives notice of the surety's intention to surrender the principal.

- If the judge finds that cause exists for the surety to surrender his or her principal, then the Clerk issues a capias and gives it to the sheriff for his or her execution and return.
- The Clerk does not release the bond until the defendant has been placed in custody by the sheriff.
- When the defendant is in custody, the Clerk releases the bond to the surety and files the release of surety in the case folder.

9. Costs of Court

Upon conviction, the defendant becomes liable for all court costs and the fine, if one was levied. It is the Clerk's responsibility to collect the fine and costs for all county offices at the termination of each case. This applies ONLY when the defendant pleads guilty or is found guilty. When the defendant is acquitted or the charges are dismissed, no costs of court are owed.

NOTE: In 2013, Senate Bill 389 from the 83rd Legislature amended Chapter 51, Subchapter G of the Government Code by adding Section 51.608. The new section provides that a cost imposed on the defendant in a criminal proceeding must be the amount established under the law in effect on the date the defendant is convicted of the offense. This provision changes prior law which specified that the law in effect on the date of the offense was applicable.

SB 389 (83rd Leg) Gov't Code Sec. 51.608

NOTE: *The Office of Court Administration operates a program to help Clerks with the collection of fines and court costs. Please call the Office of Court Administration at 512/463-1625 for more information. Information on the collections program is also available online at http://www.txcourts.gov/cip.aspx.*

The commissioners court of a county that has implemented a collection improvement program under Article 103.0033, Code of Criminal Procedure, may collect money payable under Article 103.003 or under other law.

HB 1426 (82nd Leg.)

When the defendant appears before the Clerk to pay the fine, the Clerk should have available the judge's docket sheet, the record of criminal actions, and a bill of costs. The Clerk should then:

- Check the judge's docket to see that judgment and sentence have been rendered and that the defendant has been sentenced or placed on probation.
- Prepare a written itemized bill of costs (see "Issuance of Process," Chapter IV), signed by the officer charging or entitled to receive the costs. The bill should include the case number, style of case, court designation, and judgment rendered.

  CCP Art. 103.001

  NOTE: *Clerks should review the information concerning requirements relating to a bill of costs at the following: http://www.txcourts.gov/media/449755/billofcosts.pdf.*
- Transfer each item or court cost by all county offices from the criminal record to the bill of costs.

  CCP Art. 103.003
- Enter the amount of fine shown on the judge's docket on the bill of costs.
- The judge may order the defendant to pay restitution to parties damaged as a result of the crime. If so, note that fact and the amount on the bill of costs.
- Sign the bill of costs, affix the Clerk's seal, and give the bill to defendant.
- Issue a detailed receipt to the defendant for payment received and note

  CCP Art. 103.010

payment in the criminal record.

- Enter the payment into the office's accounting system. Each Clerk must maintain a fee record.

CCP Art. 103.009

Fees and court costs are to be paid upon a defendant's conviction. No other event needs to occur to trigger the assessment of these fees and costs.

A defendant is considered to have been convicted in a case if one of the following occurs:

Local Gov't Code Sec. 133.10)

- A judgment, sentence, or both a judgment and a sentence are imposed on the person.
- The person receives community supervision, deferred adjudication, or deferred disposition.
- The court defers final disposition of the case or imposition of the judgment and sentence.

Detailed information on the court costs that should be charged upon conviction can be found at http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs.aspx

NOTE: *In 2013, Senate Bill 391 from the 83rd Legislature amended Section 11 of Article 42.12 in the Code of Criminal Procedure. The amendment provides that the defendant's obligation to pay a fine or court costs as ordered by a judge exists independently of any requirement to pay the fine or court costs as a condition of the defendant's community supervision. A defendant remains obligated to pay any unpaid fine or court cost after the expiration of the defendant's period of community supervision.*

SB 391 (83rd Leg) CCP Art. 4212, Sec. 11

D. CRIMINAL – SPECIAL CIRCUMSTANCES

1. Posting Attorney Qualification Standards – Death Penalty Cases

A local selection committee, created in each Administrative Judicial Region and composed of judges and lawyers, adopts standards for the qualification of attorneys for appointment to death penalty cases. Article 26.052 has been amended and new standards established. The local selection committee must amend their prior standards to comply with those now in effect. The committee must prominently post the standards in each District Clerk's office in the region with a list of attorneys qualified for appointment.

CCP Art. 26.052(c)(d)

SB 1308 (82nd Leg.)

2. Change of Venue

a. Clerk's Duties on Change of Venue

Where an order for a change of venue in any court in any criminal cause in this State has been made, the Clerk of the court where the prosecution is pending shall make out certified copies of the court's order directing the change and the defendant's bond, together with all the original papers in the cause. The order and papers are to be accompanied by a certificate of the Clerk under the Clerk's official seal that such

CCP Art. 31.05

papers are all the papers on file in the court in the cause. The Clerk transmits the same to the Clerk of the court to which venue has been changed.

b. Return to County of Original Venue

CCP Art. 31.08, Sec. 1

On completion of a trial in which a change of venue has been ordered and after the jury has been discharged, the court, with the consent of counsel for the State and the defendant, may return the cause to the original county in which the indictment or information was filed. All subsequent and ancillary proceedings, including the pronouncement of sentence after appeals have been exhausted, must be heard in the county in which the indictment or information was filed. However, a motion for new trial alleging jury misconduct must be heard in the county in which the cause was tried. The county in which the indictment or information was filed must pay the costs of the prosecution of the motion for new trial.

CCP Art. 31.08, Sec. 2

On an order returning venue to the original county in which the indictment or information was filed, the Clerk of the county in which the cause was tried will:

- Make a certified copy of the court's order directing the return to the original county.
- Make a certified copy of the defendant's bail bond, personal bond, or appeal bond.
- Gather all the original papers in the cause and certify under the official seal that the papers are all the original papers on file in the court.
- Transmit the items listed in this section to the Clerk of the court of original venue.

This, however, does not apply to a proceeding in which the Clerk of the court of original venue was present and performed the duties as Clerk for the court under Article 31.09, Code of Criminal Procedure (see following section).

c. Use of Existing Services

CCP Art. 31.09(a)

When a change of venue in a criminal case is ordered, the judge ordering the change of venue may, with the written consent of the prosecuting attorney, the defense attorney, and the defendant, maintain the original case number on its own docket, preside over the case, and use the services of the court reporter, the court coordinator, and the Clerk of the court of original venue. The court shall use the courtroom facilities and any other services or facilities of the district or county to which venue is changed. A jury, if required, must consist of residents of the district or county to which venue is changed.

CCP Art. 31.09(b)

Notwithstanding Article 31.05, Code of Criminal Procedure (discussed in subsection a), the Clerk of the court of original venue must:

- Maintain the original papers of the case, including the defendant's bail bond or personal bond.
- Make the papers available for trial.
- Act as the Clerk in the case.

3. Cases Transferred to Inferior Court

If a district court judge finds that the court has no jurisdiction over an offense charged in the indictment, the judge will order the case transferred to an inferior court. In such case, the Clerk must deliver the indictment, together with all the papers in the case, to the proper court or as directed in the order of transfer. The Clerk must also deliver a certified copy of all the proceedings and a bill of costs that have accrued in the district court.

CCP Art. 21.26
CCP Art. 21.28

E. CIVIL

1. Initial Proceedings

The initiation of a civil suit is always at the option of the plaintiff. There are no indictments or complaints in civil cases. The plaintiff files with the Clerk an original petition, which sets out the identity of the defendant(s) and what actions have allegedly been done by the defendant(s) that caused harm to the plaintiff. Before filing a pro se petition, the Clerk should first verify that the plaintiff is not a vexatious litigant who is subject to a prefiling order. New individuals are added regularly to the list maintained by the Office of Court Administration at http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx. A Clerk is prohibited from filing pro se litigation presented by a vexatious litigant subject to a prefiling order unless the litigant has obtained an order from the appropriate local administrative judge which permits the filing. Senate Bill 1630 from the 83rd Legislature significantly revised the Texas vexatious litigant statute (Chapter 11, Civil Practice and Remedies Code). Clerks should review the changes carefully because their specific duties and responsibilities have been amended. The changes are discussed in detail in the Vexatious Litigants portion of this chapter.

TRCP 45
Civ. Prac. & Rem. Code Sec. 11.103
SB 1630 (83rd Leg.)

After the original petition has been filed, the Clerk, when requested, will issue a citation and deliver the citation as directed by the plaintiff or plaintiff's attorney. The attorneys for the parties prepare all instruments in a civil case, except for the Clerk's processes. The role of the Clerk is to file and/or record these instruments, make them available to the court as requested, and to issue appropriate processes.

TRCP 99

2. Initial Filing Procedures

As in criminal cases, a civil case may not be heard in district court unless it has been filed for record in the District Clerk's office. A civil case begins after the petition is filed with the Clerk. The following procedures must be followed before the case can go forward:

TRCP 22

- The original petition is filed-marked by the Clerk showing the date and time of filing.

TRCP 24

- Documents are considered filed when they are tendered to the Clerk. The Clerk should file-mark the document even if a signature is missing from the pleading. Any copies of the original petition presented to the Clerk should also be file-marked and the correct case number endorsed; otherwise, the Clerk should not add to or delete anything from the copies furnished by a party.

AG Op. JM-727 (1987)

- The Clerk must collect the fee for filing a suit at the time the suit is filed. The Clerk issues a receipt for the fee paid.

Gov't Code Sec. 51.317(a)

- The petition is assigned a unique and sequential identifying number for filing purposes. This number is stamped or written on the petition and on all subsequent documents filed.

TRCP 23

- Next, the Clerk prepares the "Clerk's Court Docket," which is placed in the pending docket of the court assigned to hear the case. (See subsection 5 for detail on what must be included in a civil docket.) *TRCP 26*

- The case is now entered into the civil file docket, also called "Clerk's File Docket" (see subsection 5). *TRCP 25*

- A citation is issued to each defendant as requested by the plaintiff. One copy of the original petition accompanies each citation (See "Issuance of Process," Chapter IV).

- The party requesting the citation is responsible for having it served. The plaintiff may request that a sheriff or constable serve the citation. In that case, the Clerk may deliver the citation directly to the sheriff or constable for service and return. Otherwise, the Clerk returns the citation to the party requesting issuance. (Practically speaking, if service is not done by the sheriff or constable, it is usually done by a private process server at the plaintiff's expense.) Once the citation is served, the authorized party must file a return of service. *TRCP 99*
TRCP 103
TRCP 107

- The Clerk must collect the fee for issuing a citation at the time the citation is issued, or at the time the citation is requested. *Gov't Code Sec. 51.318(a)*

- The Clerk may NOT require an advance deposit of fees for service of process in a case pending in the county where the sheriff or constable is to serve process. *TRCP Rule 17*
AG Op. DM-382 (1996)

- A permanent case folder in which to store all instruments filed in the case is prepared. The file number of the case is marked on the case folder, the original petition is put in the jacket, and the jacket is filed in numerical sequence with the other civil cases.

The Clerk's initial processing in the case is now completed. The case is now on record with the district court, and the defendant has been notified that a suit is in progress.

3. Subsequent Filing Procedures

In a civil action, each party, or the party's attorney, must provide the Clerk with written notice of the party's name and current residence or business address. The notice must be provided at the time of initial filing, or not later than the seventh day after the Clerk requests the information. However, the notice cannot be required of a defendant until that party has appeared or answered. If any party's address changes during the course of the action, that party or the party's attorney must provide written notice of the change to the Clerk. *Civ. Prac. & Rem. Code Sec. 30.015*

Any number of additional instruments may be submitted to the Clerk for filing as the case moves toward disposition. Each of these instruments must be filed by the Clerk for the court's consideration. Some common documents filed in civil cases include:

- Citations
- Orders
- Answers
- Judgments
- Amended petitions

- Subpoenas
- Amended answers
- Affidavits
- Dismissals
- Interventions
- Motions
- Exhibits
- Writs
- Verdicts

The citations, writs and subpoenas mentioned above are issued by the Clerk and are filed for record after the sheriff's service and return. All other documents are prepared by the attorneys and filed directly with the Clerk.

The following procedures are followed to insure proper filing of all documents:

- File-mark the instrument to show the date and time received. Be sure the case number is on all documents. *TRCP 24*
- Collect the appropriate fee and issue a receipt.
- Enter the type of instrument, date of receipt, and fee collected into the civil file docket. *TRCP 25*
- If the instrument is an order or judgment, record it in the civil minutes. Enter the volume and page number in the defendant's index, plaintiff's index, civil file docket, and judge's docket sheet. *TRCP 25* *TRCP 26*
- Place the instrument in the file folder and note the type of instrument and date filed on the outside of the folder.

4. Special Pleadings and Filing Procedures

a. Answers and Amended Petitions

The defendant's original answer is the defendant's first explanation to the court of his side of the case. The defendant's answer may include as many matters as a defendant deems necessary to his defense. No filing fee is required; however, the Clerk must examine the answer closely to determine whether the defendant is requesting a citation or other process to be issued. If this is the case, the Clerk must collect the required fees. *TRCP 83* *TRCP 84* *TRCP 85*

Petitions and answers may be amended and filed several times in the course of a case. This occurs as new facts or parties to the case arise. Amended petitions and answers are usually served by the filing party's attorney. When new defendants are added, citation is usually requested and fees for citation and any other processes must be collected by the Clerk. *TRCP 63* *TRCP 64*

b. Counterclaims, Cross-Claims and Interventions

A counterclaim is an instrument filed by one party that maintains that the other party is actually the party in the wrong. Some counterclaims are mandatory; most are permissive. The most common counterclaim is filed by a defendant against a plaintiff. *TRCP 97*

Likewise, a cross-claim is an instrument filed by one party that maintains that another party is actually the party in the wrong. The difference between a

counterclaim and a cross-claim is that counterclaims are filed against opposing parties, and cross-claims are filed against parties on the same side of the civil action. A defendant may file a cross-claim against another defendant as part of its defense against the plaintiff's allegations.

Counterclaims and cross-claims are heard as part of the original suit and are not given a new case number. Some process will usually be requested of the Clerk in such cases, most commonly issuance of citation.

An intervention is the entry into the case of a third party, called the intervenor. The intervenor will file a petition in intervention with the court and is bound by the same rules as the plaintiff and defendant. As with counterclaims and cross-claims, the intervention is part of the original suit. *TRCP 60*

c. Motions to Transfer Venue

NOTE: *There are special procedures for transfer of venue in a suit affecting the parent-child relationship. These are discussed in detail in "Family Law," Chapter X.* *Family Code Chapter 155*

A motion to transfer venue is an application to transfer a case from one county to another. The contents of the motion, grounds for transfer, and mandatory venue provisions are found in Rules of Civil Procedure, Rule 86 and Rule 257.

If the motion is denied, no special action is required on the Clerk's part; the motion, any supporting documents and order are docketed as usual and the case proceeds in the court assigned. If the motion is granted, the procedures are as follows:

- The judge issues an order for change of venue.
- The Clerk prepares a transcript of all the orders made in the case and certifies the transcript under the Clerk's seal. The certified transcript and all the original papers in the case are sent to the Clerk of the court to which venue has been changed. Although required by statute only in family law cases, it is a good practice for the Clerk to keep a copy of the transferred file. The Clerk in the original county of venue must retain all original orders. *Family Code Sec. 155.207(b)* *TRCP 89*
- However, where there are multiple defendants in a severable case and the court has ordered the case to be transferred as to one or more of the defendants but not as to all, the Clerk, instead of sending the original papers, makes certified copies of the filed papers as directed by the court and forwards the certified copies to the Clerk of the court to which venue has been changed. *TRCP 89*

  NOTE: *A District Clerk may charge a "reasonable" fee for making certified copies of the filed papers as directed by the court in cases severed as to some but not all defendants. The costs for such services are taxed against the plaintiff. The Clerk has no discretion to delay the transfer of a case under TRCP 89 by refusing to transfer the case file, even where the plaintiff fails to pay the fee for the Clerk's services in making certified copies.* *AG L.O. 92-87 (1992)*

- The Clerk of the transferring court should include a bill of costs for any fees remaining due. The costs incurred prior to the time the suit is filed in the court to which the cause is transferred are taxed against the *TRCP 89*

plaintiff.

- The Clerk of the transferring court should prepare a transmittal certificate in duplicate, which itemizes all instruments filed for record in the transferring court and that are being transferred. The certificate should include a receipt for the Clerk of the receiving court to sign and return, which acknowledges the receipt of the transcript. The Clerk of the transferring court should date, sign and seal the transmittal certificate and attach it to the transcript. *TRCP 89*
- The Clerk of the court receiving the transfer should file-stamp and docket the transferred case. The Clerk should then check the index to verify that all documents are included in the transcript.
- To acknowledge receipt of the transcript, the Clerk of the court receiving the transfer should sign and return a copy of the receipt included on the transmittal certificate to the Clerk of the transferring court. The Clerk of the transferring court should file the receipt in the case file folder.
- After the case has been transferred, the Clerk of the receiving court mails notification to the plaintiff or his attorney. The notification must state that the transfer of the case has been completed, that the filing fee in the proper court is due and payable within 30 days from the mailing of the notification, and that the case may be dismissed if the filing fee is not timely paid. *TRCP 89*
- If the filing fee is timely paid, the case will be subject to trial at the expiration of 30 days after the mailing of notification to the parties or their attorneys by the Clerk that the papers have been filed in the court to which the case was transferred. *TRCP 89*
- If the filing fee is not timely paid, any court of the receiving county to which the case might have been assigned may, upon its own motion or the motion of a party, dismiss the case without prejudice. *TRCP 89*

NOTE: *Cases transferred under a change of venue need not be assigned and docketed in the receiving county until the filing fee is paid.* *AG Op. JM-216 (1984)*

d. Depositions

Under the Rules of Civil Procedure, as revised in 1999, depositions are not filed with the court. The new rules place much of the burden concerning depositions on the deposition officer and the lawyers. *TRCP 203*

The deposition officer (usually, a court reporter) must file a duly sworn certificate with the court, serve it on all parties, and attach the certificate as part of the deposition transcript or recording. The certificate includes the following statements and information: *TRCP 203.2*

- The witness was duly sworn by the officer.
- Any deposition transcripts were submitted to the witness or to the witness's attorney for examination and signature. This statement should include the date on which the transcript was submitted, whether the witness returned the transcript, and if so, the date on which it was returned.

- Any changes made by the witness are attached to the deposition transcript.
- The deposition officer delivered the deposition in accordance with Rule 203.3.
- States the amount of time used by each party at the deposition.
- States the amount of the deposition officer's charges for preparing the original deposition transcript, which the Clerk of the court must tax as costs.
- A copy of the certificate was served on all parties. This statement should include the date of service.

TRCP 203.3

The deposition officer must also deliver the original deposition, including exhibits, to the party or attorney who requested the deposition be taken, and serve notice on all parties that this has been done. The original deposition transcript is kept by that party or attorney until time of trial, when it will be introduced as an exhibit.

e. Injunctions

An injunction is an equitable remedy granted by a court that directs a party to do or refrain from doing a specific act. Ordinarily, a party is entitled to an injunction only if he or she has no adequate remedy at law.

There are three types of injunctions: temporary restraining orders, temporary injunctions, and permanent injunctions. A temporary restraining order is intended to give emergency relief and to preserve the status quo of the subject matter in controversy until a hearing may be held on a temporary injunction. A temporary injunction serves to preserve the status quo of the subject matter in controversy pending the trial on the merits. The purpose of a permanent injunction is to give permanent relief after a trial on the merits.

To obtain a temporary restraining order, the party seeking relief files an application for temporary restraining order with the Clerk.

TRCP 680

A temporary restraining order may be issued without notice and hearing when the applicant demonstrates that he or she is threatened with immediate and irreparable injury, loss, or damage. Every temporary restraining order granted without notice and hearing must be endorsed with the date and hour of issuance. It must also be filed immediately in the Clerk's office and entered of record. Every temporary restraining order must include an order setting a date for hearing on the temporary or permanent injunction sought.

TRCP 681-683

A party seeking a temporary injunction files a petition with the Clerk. A temporary injunction is often sought at the expiration of a temporary restraining order. A temporary injunction can be granted only after notice to the adverse party and a hearing. Every order granting a temporary injunction must include an order setting the cause for trial on the merits with respect to the ultimate relief sought.

TRCP 684

In the order granting a temporary restraining order or temporary injunction, the court must fix the amount of security to be given by the applicant. The bond to the adverse party must name two or more sureties and is conditioned upon the applicant agreeing to abide by the decision made in the case and to pay all money and costs that may be adjudged against the applicant. The bond must be on file with the Clerk before the temporary restraining order or temporary injunction is issued. Because they are granted after trial and are, for all intents and purposes, court orders, no bond is required for permanent injunctions.

When a temporary restraining order or an order fixing time for a hearing on an application for a temporary injunction is granted, the applicant must file a petition with the Clerk for a temporary injunction (if it has not already been filed). If the petition does not pertain to a pending suit, the Clerk collects the appropriate fees and dockets the case showing the party applying for the injunctive relief as the plaintiff and the adverse party as the defendant. *TRCP 685*

When the petition does not pertain to an already pending suit, the Clerk issues a citation to the defendant as in other civil cases. However, when a temporary restraining order has been issued and is accompanied by a copy of the petition, the citation does not need to contain a statement of the nature of plaintiff's demand. It is sufficient for the citation to refer to the plaintiff's petition, which accompanied the temporary restraining order. *TRCP 686*

Once the petition, order and bond are on file, the Clerk issues the temporary restraining order or temporary injunction. The Clerk delivers the following for service on the defendant to the sheriff or any constable in the county of the residence of the person enjoined, or to the applicant, as the applicant directs: the temporary restraining order or temporary injunction, a copy of the petition, a copy of the order, and the citation. If more than one person is enjoined and they reside in different counties, the Clerk issues additional copies of the writs as requested by the applicant. The Clerk must collect the appropriate fee for issuing the writ of injunction. *TRCP 688* *TRCP 689*

The writ of injunction must be dated and signed by the Clerk, the official seal affixed, and the date of issuance written on it. *TRCP 687(f)*

The officer serving the writ of injunction will fill out the return information on the original process and return it to the court for filing. *TRCP 689*

The defendant in an injunction proceeding may answer as in other civil actions. *TRCP 690*

As a general rule, once an injunction is dissolved, a bond is no longer required. However, in the case of an injunction restraining the collection of money, if the injunction is dissolved prior to trial, the court will require the defendant to post a bond. The bond must have two or more sureties, be approved by the Clerk of the court, be payable to the plaintiff, and be for twice the sum enjoined. *TRCP 691*

5. Dockets

The Clerk is required by statute to maintain two dockets for each civil case filed: the file docket and the court docket. Proper maintenance of each docket will facilitate the record keeping for each case. *TRCP 25* *TRCP 26*

The Clerk's file docket, also called the fee docket or file docket, is the Clerk's master reference to all instruments filed in the individual case. A separate docket is created for each case at the time a suit is filed. The file docket must contain the following information: *TRCP 25*

- File number of the case *TRCP 25*
- Date of filing
- Court of jurisdiction
- Names of the parties to the suit
- Names of the attorneys of record
- Nature of the suit

As the case progresses, the Clerk must keep a record of all instruments filed. These include all processes issued by the Clerk and date of issuance; all returns of processes and date of return; all instruments filed for record and date of filing; and all orders and judgments and dates rendered.

While not required by statute, most Clerks find it convenient to incorporate a listing of all fees charged and the disbursement of such fees in the file docket. Other Clerks prefer to maintain a separate fee record for each case in another form.

TRCP 26

The other required docket is the Clerk's court docket, sometimes referred to as the judge's docket. This is also prepared when a case is filed. The court docket officially places the case in the jurisdiction of the court that is to hear the case.

This docket provides the judge with all the basic information of the case and should be in his possession whenever the proceedings of the case are being heard. The court docket becomes the official record of all pleas, motions, and rulings in the case. The judge should note all these actions on the docket as they occur. Often, docket sheet entries are typed by the Clerk or a deputy as dictated by the judge.

Information recorded on the court docket should include the file number of the case; the date of filing; court of jurisdiction; names of the parties; names of the attorneys of record; nature of the suit; all pleas, motions and rulings; the volume and page number of the permanent record of all rulings, orders, and judgments; and a notation of the payment of the jury fee, which is to be entered promptly and shows the date and by whom paid.

In addition to maintaining the file docket and the court docket, the Clerk is also responsible for maintaining the case file folder. The case file folder serves as the permanent depository for all instruments filed in a case. The folders are filed in numerical sequence according to file number.

The folder is made available to the judge and attorneys each time some proceeding is being heard in court. For the convenience of the court, the attorneys, and the Clerk, most Clerks make it a practice to note all processes and instruments filed for record on the outside of the folder. The folder may be used as a file docket in the courtroom.

At the conclusion of each case, the Clerk should examine the contents of the case folder to insure that all instruments noted on the file docket are in the file. The Clerk should also ensure that all orders and judgments have been indexed.

6. Multidistrict Litigation

Gov't Code Sec. 74.162

Rules of Jud. Adm. 13.3(a-c) 13.3(f) 13.2

The judicial panel on multidistrict litigation (MDL Panel) may transfer civil actions involving one or more common questions of fact that are pending in the same or different county courts or district courts for consolidated pretrial proceedings (such as summary judgment) but not for trial on the merits. Such a transfer may be (1) in response to a motion by a party in a case; (2) in response to a request by a trial court or by the presiding judge of an administrative judicial region; or (3) on the MDL Panel's own initiative. Any motions, requests, responses to the motions or requests, and replies to the responses are to be filed with the MDL Panel Clerk. The MDL Panel Clerk is the Clerk of the Supreme Court of Texas.

Rules of Jud. Adm. 13.3(i)

District Clerks become involved in this process in that any party filing a motion for a case to be transferred is required to file a notice in the trial court that a motion for

transfer has been filed. When a request for a transfer has been filed with the MDL Clerk by a judge, the MDL Clerk must cause a notice of this event to be filed with the trial court.

If the MDL Panel decides to transfer a case, the MDL Panel will file a notice of transfer with both the trial court and the pretrial court (*i.e.*, the district court that will hear the consolidated pretrial proceedings). After notice of transfer is filed in the trial court, the trial court is generally to take no further action in the transferred case.

Rules of Jud. Adm. 13.5(a) 13.5(b)

If the trial court and the pretrial court are in the same county, then the trial court must transfer the case file to the pretrial court in accordance with the local rules governing the courts of that county. If the trial court and the pretrial court are not in the same county, then the trial court Clerk must transmit the case file to the pretrial court Clerk.

Rules of Jud. Adm. 13.5(c)

At the conclusion of the pretrial court's work, cases may or may not be remanded to the trial court. If the pretrial court has rendered a final and appealable judgment (such as a summary judgment) in a case, the case will not be remanded to the trial court. On the other hand, the pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply. When a case is remanded to the trial court, the Clerk of the pretrial court will send the case file to the trial court. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The Clerk of the trial court must reopen the trial court file under the cause number of the trial court without assessing any new filing fees.

Rules of Jud. Adm. 13.7

7. Civil Filing Fees

The Office of Court Administration (OCA) has published a list of District Clerk Civil Filing Fees. The list details the separate filing fees District Clerks may assess in civil suits. Some of the fees are applicable only in certain types of suits and in certain counties. As an aid in determining the particular fees that must or may be charged in any given type of civil suit, OCA has also prepared a Schedule of District Court Civil Suits and Actions.

F. SPECIFIC CASE TYPES

1. Probate

In most counties, the constitutional county court has original probate jurisdiction. In counties with county courts at law, the constitutional county court and county court(s) at law share original probate jurisdiction. Statutory Probate Courts have been created to serve ten of the State's largest counties. These courts have original and exclusive jurisdiction over their counties' probate matters, including guardianships and mental illness commitments.

Probate Code Sec. 5

District courts' original jurisdiction is limited to contested probate matters. In those counties with statutory probate courts, those courts have concurrent jurisdiction with district courts in all personal injury, survival, or wrongful death actions by or against a person in that person's capacity as a personal representative, in all actions by or against a trustee, in all matters relating to inter vivos, charitable and testamentary trusts, and in all actions involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate.

When a contested matter arises in a county where there is no statutory probate court or county court at law, there are two options. First, the judge may on his own motion or must on the motion of a party to the case, request the assignment of a statutory probate judge to hear the contested matter. A judge so assigned has the jurisdiction, powers and duties given to statutory probate judges by general law.

Probate Code Sec. 5

Second, the judge may on his own motion or must on the motion of a party, transfer the contested portion of the proceeding to district court. In this case, the district court and county court have concurrent jurisdiction while the matter is in controversy. The court to which the proceeding is transferred may hear the proceeding as if originally filed in that court. While the contested matter is pending in district court, the District Clerk may perform any function a County Clerk would perform in the same type of action.

In all contested probate proceedings, the parties are entitled to a trial by jury as in other civil actions.

Probate Code Sec. 21

Upon resolution of the contested matter, the District Clerk transfers the resolved portion of the case back to the originating court for further proceedings not inconsistent with the orders of the district court.

Probate Code Sec. 5(b-3)

Any final order in a probate proceeding is appealable to the court of appeals.

Probate Code Sec. 5(g)

2. Condemnation Proceeding

A condemnation proceeding (also known as an eminent domain proceeding) is one in which a government entity seeks to exercise its right to acquire real property for a public use. If the government entity makes an offer to the owner of the property and it is accepted, then there is no court intervention. Condemnation suits are also filed to clear a cloud on title to real property or if the owner of the property is seeking an injunction against the government entity pursuing condemnation. SB 18 from the 82nd Legislature made sweeping changes in laws relating to eminent domain. Chapter 2206, Government Code, has been significantly expanded by the addition of Subchapter B, Procedures Required To Initiate Eminent Domain Proceedings. This subchapter may be cited as the Truth in Condemnation Procedures Act. New procedures are required before a governmental entity initiates a condemnation proceeding. Clerks should review these requirements, especially those dealing with the public meeting notice and the required submission of a letter to the Comptroller in order for an entity to avoid losing their eminent domain authority.

District courts and county courts at law have concurrent jurisdiction in condemnation cases. The suit may be filed in district court when the State, a political subdivision of the State, an association or a corporation is a party. If an eminent domain case is pending in a county court at law and the court determines there are issues it cannot adequately address, the judge will transfer the case to district court. In counties where there are no county courts at law, the suit must be filed in district court. Court Clerks are to assign condemnation cases in equal numbers in rotation to all judges.

Property Code
Sec. 21.001
Sec. 21.002
Sec. 21.003
Sec. 21.013(c)
Sec. 21.013(d)

If the government entity wants to acquire property and cannot reach agreement with the owner regarding the amount of damages to be paid, the entity may begin a condemnation proceeding by filing a petition in the proper court. The petition must describe the property to be condemned; state with specificity the public use for which the property will be used; state the name of the owner of the property (if known); state that the entity and owner cannot agree on damages; and, if applicable, state that the

Property Code
Sec. 21.012
Sec. 21.012(6)

SB 18
(82nd Leg.)

entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112. The petition must also state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113. Also, an entity that files a petition under Section 21.012 must provide a copy of the petition to the property owner by certified mail, return receipt requested.

There are additional required statements when the government entity is filing a condemnation suit to acquire water rights.

Property Code Sec. 21.0121

The petition for condemnation is served as in all other civil actions. Alternative pleadings, by parties to the suit or third parties, may be filed.

Property Code Sec. 21.017

The judge to whom the case is assigned appoints special commissioners, who must serve notice of the special hearing to determine if the property in question is to be condemned. Assuming it is, the commissioners issue an award of damages, which must be filed with the court.

Property Code Sec. 21.014-016
Property Code Sec. 21.048

The judge must inform the Clerk of the special commissioners' decision no later than the next working day after the decision is filed. The Clerk is required to give notice of the award, by certified mail, no later than the working day following the filing of the decision, to all parties or their attorneys of record.

Property Code Sec. 21.049

Any party who is dissatisfied with the findings of the special commissioners may object by filing a written statement with the court. When such objection is filed, the Clerk cites the adverse party, and the case is tried as other civil cases.

Property Code Sec. 21.018

Condemnation cases may be appealed as any other civil case.

Property Code Sec. 21.063

G. OTHER CIVIL MATTERS

1. Occupational Driver's License

When a person files a petition under Transportation Code Section 521.242 to obtain an occupational driver's license following conviction for a charge of driving while intoxicated or driving while intoxicated-assault, the Clerk should charge the fee for filing an original civil suit. A new case number is also assigned. The suit is filed in the criminal court in which the person was convicted. A person convicted under Penal Code 49.045, Driving While Intoxicated with Child Passenger, is not eligible for an occupational license. Section 49.04 of the Penal Code was amended by HB 1199 (82nd Legislature) to provide a circumstance under which an offense under this section can be classified as a Class A misdemeanor. Also, Section 49.09, Penal Code, was also amended in HB 1199 by adding a new subsection which makes an offense under Section 49.07 a felony of the second degree if it is shown at trial that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state.

AG L.O. 96-131(1996)

Penal Code Sec. 49.04 Sec. 49.07

2. Inmate Litigation

The following applies only to a suit brought by an inmate in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate. It does not apply to an action brought under the Family Code.

Civ. Prac. & Rem. Code Sec. 14.002

A court may dismiss a claim, either before or after service of process, if the court finds that the allegation of poverty is false, the claim is frivolous or malicious, or the inmate filed an affidavit or unsworn declaration that the inmate knew was false. On

Civ. Prac. & Rem. Code Sec. 14.003

motion of the court, a party, or the Clerk of the court, a court may hold a hearing to determine whether a claim should be dismissed.

Civ. Prac. & Rem. Code Sec. 14.003

A court that dismisses a claim brought by a person housed in a facility operated by or under contract with the Texas Department of Criminal Justice (the "Department") may notify the Department of the dismissal and, on the court's own motion or the motion of any party or the Clerk of the court, may advise the Department that a mental health evaluation of the inmate may be appropriate.

Civ. Prac. & Rem. Code Sec. 14.006

A court may order an inmate who has filed such claim to pay court fees, court costs, and other costs. The Clerk of the court will mail a copy of the court's order and a certified bill of costs to the Department or jail, as appropriate. On receipt of the court's order, the Department or jail will withdraw money from the inmate's trust account in accordance with the court's order, hold the money in a separate account, and then forward the money to the court Clerk on the date the total amount to be forwarded equals the amount of court fees and costs that remains unpaid or the date the inmate is released, whichever is earlier.

Civ. Prac. & Rem. Code Sec. 14.007
Civ. Prac. & Rem. Code Sec. 14.011

On receipt of an order assessing fees and costs that indicates that the court made a finding that the inmate has previously filed an action that was dismissed as frivolous or malicious, a Clerk of the court may not accept another such filing from that inmate until all outstanding costs are paid. The fees and costs assessed include costs incurred by the court and the inmate's facility, including service of process, postage, and transportation, housing and medical care incurred in connection with the appearance of the inmate in court for any proceeding. However, a court may allow such inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

3. Vexatious Litigants

The original vexatious litigant statute for Texas was created by the Texas Legislature in 1997 with the passage of HB 3087. This bill enacted Chapter 11 of the Civil Practice and Remedies Code. The original statute used the California statute as a model. The Texas statute was amended in 2011 during the first called session of the 82nd Legislature as part of HB 79. The statute was more substantially amended in 2013 during the regular session of the 83rd Legislature by Senate Bill 1630.

The statute is divided into Subchapters A, B, and C. Subchapter A contains Section 11.001, Definitions, and Section 11.002, Applicability. Section 11.002 was added as part of the 2013 amendments and provides that **Chapter 11 does not apply to municipal courts** and **Chapter 11 does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se**.

Civ. Prac. & Rem. Code Sec. 11.051-.057

Subchapter B is comprised of Sections 11.051 – 11.057. Section 11.051, Motion For Order Determining Plaintiff A Vexatious Litigant And Requesting Security, provides that a defendant who wishes to move the court for an order that determines that the plaintiff is a vexatious litigant and requires the plaintiff to furnish security **must file the motion on or before the 90th day after the date the defendant files the original answer or makes a special appearance.** Note that if there is more than one defendant, defendants other than the one who files the motion are not automatically included. Section 11.054, which is discussed in greater detail below, provides the mandatory criteria for finding a plaintiff to be a vexatious litigant. Section 11.052, Stay Of Proceedings On Filing Of Motion, provides that if a motion under Section 11.051 is filed on or after the date the trial starts, the litigation is stayed and the **moving defendant** is not required to plead for a period the court determines. If the

motion is filed before the trial starts, the litigation is stayed and the **moving defendant** is not required to plead: (if the motion is denied) before the 10th day after the date the motion is denied; or (if the motion is granted) before the 10th day after the date the **moving defendant** receives written notice that the plaintiff has furnished the required security. Section 11.053, Hearing, provides that the court **shall, after notice to all parties,** conduct a hearing to determine whether to grant the motion. The court may consider **any evidence material to the ground of the motion**, including written or oral evidence and evidence presented by witnesses or by affidavit.

In order for there to be a finding by a court that a plaintiff is a vexatious litigant, certain criteria must be met:

The moving defendant must always first show facts which establish that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant; then, the moving defendant must show facts which support a finding by the court that one or more of the three "options" described below exists.

> "Option One" – That the plaintiff, in the seven-year period immediately preceding the date the moving defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court and each of these litigations has been either finally determined adversely to the plaintiff or permitted to remain pending at least two years without having been brought to trial or hearing or has been determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure.
>
> "Option Two" – That after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either the validity of the determination against the same defendant as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.
>
> "Option Three" – That the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurance.

Section 11.055 provides that if the court, after hearing the evidence on the motion,determines that the plaintiff is a vexatious litigant, the court **shall** order the plaintiff to furnish security **for the benefit of the moving defendant**. The court shall provide that the security is an undertaking by the plaintiff **to assure payment to the moving defendant of the moving defendant's reasonable expenses** incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Section 11.056, Dismissal For Failure To Furnish Security, provides that the court **shall** dismiss a litigation **as to a moving defendant** if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Section 11.057, Dismissal On The Merits, provides that if the litigation is dismissed on its merits, the **moving defendant** has recourse to the security furnished by the plaintiff in an amount determined by the court.

Civ. Prac. & Rem. Code Sec. 11.101 – 11.104

Subchapter C, Prohibiting Filing Of New Litigation, is comprised of Sections 11.101 – 11.104. Section 11.101 provides that on the motion of any party or on the court's own motion, the court may, **after notice and hearing as provided by Subchapter B and if the court makes a finding that the person is a vexatious litigant**, enter an order prohibiting the person from filing pro se a new litigation in a court to which the order applies under this section without permission to file the litigation from the appropriate local administrative judge described by Section 11.102(a). A person who disobeys an order under Subsection (a) is subject to contempt of court. **A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.**

Note that Section 11.101(d) provides that a prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order. Also note that Section 11.101(e) provides that a prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Section 11.102, Permission By Local Administrative Judge, includes a requirement that a vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation **shall** provide a copy of the request to all defendants named in the proposed litigation. If a vexatious litigant subject to a prefiling order is seeking permission to file in a justice or constitutional county court, the vexatious litigant must obtain permission to file from the local administrative district judge of the county in which the vexatious litigant intends to file. If a vexatious litigant subject to a prefiling order is seeking permission to file in a court other than a justice or constitutional county court, the vexatious litigant must obtain permission to file from the local administrative judge of the type of court in which the vexatious litigant intends to file. The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation. Subsection (d) provides that the appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation has merit and has not been filed for the purposes or harassment or delay. Subsection (e) provides that the appropriate local administrative judge described by Subsection (a) may condition permission to file a litigation on the furnishing of security for the benefit of the defendant as provided in Subchapter B. Subsection (f) provides that a decision of the appropriate local administrative judge described by Subsection (a) denying a vexatious litigant permission to file a litigation under Subsection (d) or conditioning permission to file a litigation on the furnishing of security under Subsection (e) is **not grounds for appeal**, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is **not grounds for appeal to the supreme court or court of criminal appeals.**

The 2013 amendments to Section 11.103 include some changes to insert conforming terms and references in Subsections (a), (c), and (d) and repealed Subsection (b). The most significant change to this section concerns mistaken filing by a Clerk of litigation by a vexatious litigant who is subject to a prefiling order. New Section 11.1035 now contains the provisions for mistaken filing. This section provides that if the Clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate

local administrative judge described by Section 11.102(a), any party may file with the Clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation. **No later than the next business day after the date the Clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the Clerk shall notify the court that the litigation was mistakenly filed.** On receiving notice from the Clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation. **An order dismissing litigation that was mistakenly filed by a Clerk may not be appealed.**

Section 11.104 was amended in 2013 by adding Subsection (c). This new subsection provides clearly that the Office of Court Administration may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversing court.

Clerks may email a copy of a prefiling order to OCA at JudInfo@txcourts.gov. Clerks may fax a prefiling order to OCA at (512) 936-2423. Clerks may mail a prefiling order to OCA at Office of Court Administration, Attn: Judicial Information, P. O. Box 12066, Austin, Texas 78711-2066.

The OCA maintains the list of vexatious litigants subject to prefiling orders online at http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx.

4. Uniform Enforcement of Foreign Judgments Act

Civ. Prac. & Rem. Code Sec. 35.001-.008

A foreign judgment is a judgment, decree, or order issued by a court of the United States or of any other state. A copy of any foreign judgment duly authenticated (three-way certification attached) may be filed in the office of the Clerk of any court of competent jurisdiction of this State. The Clerk will treat the foreign judgment in the same manner as a judgment of the local court. A case number should be assigned to the judgment, and the case should be indexed. A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the local court.

SB 428 (82nd Leg.) Civ. Prac. & Rem. Code Sec. 35.004 Sec. 35.005

At the time the foreign judgment is filed, the judgment creditor or his attorney must mail notice to the judgment debtor. The creditor then files a "proof of notice" with the Clerk to be placed with the docket sheet.

The fee for filing a foreign judgment is the same as for filing a new civil suit. Fees for other enforcement proceedings in the case are also as provided in the Clerk's fee schedule.

5. Filing Fraudulent Court Records or Liens

Gov't Code Sec. 51.901

If a Clerk believes in good faith that a document submitted for filing or a document previously filed is fraudulent, the Clerk must notify in writing the persons

affected by the document no later than the second business day after the document is offered for filing. If the document has already been filed, the written notice must be provided no later than the second business day after the Clerk becomes aware the document may be fraudulent.

AG L.O. 98-016

A document is presumed to be fraudulent if it is issued by a purported court of judicial entity not created by the constitution or laws of a state of the United States or if it is from a purposed judicial officer of such court.

Any action to enjoin the filing of a fraudulent court record or lien must be filed in a district court in the county in which the document is recorded or the affected property is located.

Civ. Prac. & Rem. Code Sec. 12.004

The fee for filing such action is limited to $15. The plaintiff may not be assessed any other fee, except the fee for service of notice. The service fee is limited to $20 for personal service or the cost of postage if the service is by registered or certified mail.

Civ. Prac. & Rem. Code Sec. 12.005

If the plaintiff prevails in the action, the court can order the defendant to pay the difference between the $15 fee paid by the plaintiff and the ordinary filing fee.

Civ. Prac. & Rem. Code Sec. 12.005

The Clerk must post a sign in letters at least one inch high that is clearly visible to the public in or near the Clerk's office. The sign must state that it is a crime to intentionally or knowingly file a fraudulent court record or instrument with the Clerk.

Gov't Code Sec. 51.904

CHAPTER 4

ISSUANCE OF PROCESSES

A. INTRODUCTION

In a broad sense, a "process" can be described as a legal notice. There are many different types of processes (*i.e.*, there are many different types of legal notices). Generally, a process is directed to a particular individual and commands that individual to perform a certain action.

Often, however, a process is thought of in a more narrow sense. Specifically, a process is often considered to be the same thing as a citation. A citation is a legal notice informing the defendant in a civil lawsuit that he or she has been sued and directing the defendant to file an answer. *TRCP 99*

Rather than thinking of a citation as being synonymous with a process, one would be more accurate in thinking of a citation as a particular type of process. This chapter will discuss the many different types of processes, including, of course, that specific type of process known as a citation.

The issuance of processes is an important function of the District Clerk in supporting the court system. The processes issued by the Clerk constitute the written instructions of the court. Issuance of processes facilitates a structured and orderly system of justice.

B. ISSUANCE OF PROCESSES - CRIMINAL

The District Clerk is required to issue a variety of processes in the name of the court. Most of the processes are for the purpose of bringing persons or things before the court. *CCP Art. 2.21*

1. Capias

The capias is a common form of process. It is a writ directing any peace officer in the State of Texas to arrest a person accused of an offense and bring him or her before the court. A capias issued in a case after commitment or bail but before trial is controlled by Chapter 23 of the Code of Criminal Procedure. A capias issued in a case after judgment and sentence is controlled by Chapter 43 of the Code of Criminal Procedure. A capias may be issued in electronic form. *CCP Art.23.01 CCP Art. 43.015 CCP Art. 23.031*

The District Clerk is required to issue a capias upon each felony indictment if the defendant is not in custody or under bond. The following procedures are generally followed when issuing a capias. *CCP Art. 23.03*

- Secure a blank capias form. *CCP Art. 23.02*
- From the indictment, fill out the defendant's name, type of offense, name of the court, and the time the capias is returnable.
- Enter the date of issuance and the name of the Clerk issuing the capias. The capias must be attested officially by the issuing authority.
- Affix the seal of the court and sign it.
- Deliver or mail the capias to the sheriff of the county where the defendant resides or is to be found. *CCP Art. 23.03*

- Instead of issuing a capias, the District Clerk should issue a "summons" upon a request from the attorney representing the state. If a defendant fails to appear in response to the summons, a capias should be issued.

- A capias may be executed by any peace officer. In felony cases, the defendant must be delivered immediately to the sheriff of the county where the arrest is made. *CCP Art. 23.13*

- After arrest and after bail is taken, the capias and bond shall be delivered to the issuing court. *CCP Art. 23.17*

2. Capias or Warrant Issued After Original Arrest

In some cases, the defendant is to be arrested after the original capias has been executed and returned. This occurs in cases of release of surety (where the surety wants to surrender the principal [i.e., the defendant] so bond can be canceled) after bond forfeiture, or on motion to revoke community supervision. The court issues a warrant of arrest or a capias. A capias incident to surrender of the principal or bond forfeiture must be issued no later than 10 days after the order permitting surrender or forfeiture order is entered. An arrest after bond forfeiture may be executed by a peace officer or by a private investigator licensed under Chapter 1702 of the Occupations Code. *CCP Art. 17.19(b)* *CCP Art. 23.05* *CCP Art. 42.12, Sec. 21*

3. Capias Pro Fine

A capias pro fine is a writ issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs. *CCP Art. 43.015(2)*

4. Bill of Costs

At the termination of a case where the defendant has been found guilty, the defendant becomes liable to pay court costs and any fine that may have been assessed. The Clerk is required to prepare a bill of costs detailing the case number, style, judgment, and itemization of costs due from the defendant. The Clerk signs the instrument, affixes the seal of the court, and gives the bill of costs to the defendant or to the sheriff for service. A bill of costs should accompany a commitment to the Institutional Division of the Texas Department of Criminal Justice. Clerks should review the information available at http://www.txcourts.gov/media/449755/billofcosts.pdf. *CCP Art. 103.001*

5. Subpoena

A subpoena commands an individual to appear before the court on a certain date to give testimony in a case. The prosecution and defense may file an application in writing or electronically with the Clerk for each witness desired. *CCP Art. 24.01* *CCP Art. 24.03*

The application for subpoena must show the following information regarding the desired witness: name; location, if known; vocation, if known; and that the testimony is material to the State or defense. *CCP Art. 24.03(a)*

If possible, the Clerk shall include in one subpoena the names of all witnesses for the State and for the defendant. The Clerk is to indicate whether the witness is summoned for the State or for the defendant. However, if the defendant is a member of a combination as defined by Section 71.01, Penal Code, the Clerk shall issue a separate subpoena for each witness that does not include a list of the names of all other witnesses for the State or the defendant. *CCP Art. 24.03(b)*

A subpoena may be served by reading the subpoena in the hearing of the witness; personally delivering a copy of the subpoena to the witness; electronically transmitting a copy of the subpoena, with acknowledgment of receipt requested, to the last known *CCP Art. 24.04(a)*

electronic address of the witness; or mailing a copy of the subpoena by certified mail, return receipt requested, to the last known address of the witness. Service may not be made by certified mail if the applicant requests in writing that the subpoena not be served in this manner, or if the proceeding for which the witness is being subpoenaed begins within seven days of the proposed mailing date. The most commonly used methods are personal delivery and certified mail.

CCP Art. 24.04(b)
CCP Art. 24.17

The officer having the subpoena shall make due return, showing the time and manner of service. If the subpoena is not served, the officer shall show in his return the cause of his failure to serve it. If receipt of an electronically transmitted subpoena is not acknowledged within a reasonable time or a mailed subpoena is returned undelivered, the officer shall use due diligence to locate and serve the witness. If the witness could not be found, the officer shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

If the application asks for out-of-county witnesses, the subpoenas should be made in duplicate. The Clerk sends the original and copy to the sheriff of the county in which the witness resides. The sheriff will make return on the original.

6. Subpoena Duces Tecum

CCP Art. 24.02

The subpoena duces tecum is similar to the subpoena except that it commands the witness to bring physical evidence to court to be used in the case. This evidence usually consists of documents or records. An application should specify what evidence the witness needs to produce in court.

7. Writs of Attachment

CCP Art. 24.11
CCP Art. 24.12

A writ of attachment commands a peace officer to physically bring a witness before a court, magistrate, or grand jury proceeding. It is most commonly issued when a witness who resides in the county of prosecution has been subpoenaed to appear, and fails to do so. A writ of attachment may be issued by the Clerk, a magistrate, or a foreman of a grand jury. The officer issuing the writ of attachment must sign and date it.

CCP Art. 24.13

A writ of attachment is also used to bring prisoners, confined in an institution operated by the Department of Corrections or in any jail in Texas, before the court. This use of a writ of attachment in no way limits the power of the courts to issue bench warrants.

CCP Art. 24.14

Writs of attachment are also issued to guarantee attendance by material witnesses, whether they have disobeyed a subpoena or not. If the defense or the prosecution believes a witness is material, and that the witness is about to leave the county of prosecution, counsel will file an affidavit with the Clerk so stating. The Clerk will then issue a writ of attachment.

CCP Art. 24.15

A writ of attachment may also be issued to bring witnesses before a grand jury. The State's attorney applies for a subpoena for a witness who resides in the county of prosecution. At the time the application is made, if the attorney has reason to believe the witness will leave the county before appearing, then he makes a sworn application so stating, and the Clerk issues a writ of attachment. A witness who fails or refuses to appear as summoned or attached under this Article is subject to a fine of not more than $500, which is collected as fines and costs in all other criminal cases.

8. Reimbursement of Expenses of Nonresident Witnesses

CCP Art. 35.27, Sec. 1

Every person subpoenaed by either party or otherwise required or requested in

writing by the district attorney to appear and testify in a criminal proceeding who resides outside the state or county in which the prosecution is pending shall be reimbursed by the State for his reasonable and necessary transportation, meal, and lodging expenses incurred by reason of his attendance as a witness. Witnesses who reside outside the State of Texas are subject to the provisions of Article 24.28, Section 4(a) and (b), Code of Criminal Procedure, (Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings).

A witness, when attached and conveyed by a sheriff or other officer, is not eligible to receive reimbursement of transportation, meal, or lodging expenses while in the custody of the officer.

CCP Art. 35.27, Sec. 9

A witness must complete an affidavit setting out the transportation, meal, and lodging expenses necessitated by his travel to and from and attendance at the place he appeared to give testimony, together with the number of days that he was absent from his residence.

CCP Art. 35.27, Sec. 2

A copy of a witness fee claim form must be filed with the Clerk of the court, setting out the facts showing entitlement to reimbursement. No fee shall be required of any witness for the processing of his claim for reimbursement.

CCP Art. 35.27, Sec. 4

The District Clerk or the witness may complete the form. The witness swears to and signs the claim before the Clerk. The claim is then presented to the judge before whom the criminal proceeding was pending for approval.

If the judge approves the claim, the claim form is returned to the Clerk for the Clerk's certification. If the claim has been assigned, then the assignment located on the back of the claim form must be completed. The assignment is sworn to and signed by the witness before the Clerk or a notary public. If both an assignee and a witness are to be reimbursed, the amount due to each must be itemized on the claim form.

The Clerk, the witness, or anyone acting on behalf of the witness mails the claim form to the State Comptroller's Office. A witness claim form must be filed with the State Comptroller's Office within twelve months from the date the witness is released from further court attendance. Any claim submitted after that date is barred by statute.

CCP Art. 35.27, Sec. 5

AG Op. C-637 (1966)

9. Bench Warrants

A bench warrant is a warrant for arrest issued from the bench or otherwise by the judge. It is used to compel attendance in cases of contempt committed out of court, and in similar cases. The Court of Criminal Appeals has held that a bench warrant is the proper method to bring persons in custody in another location back to court on other charges.

Ex ParteLowe, 251 S.W. 506 (1923)

To prepare such a warrant, the Clerk must have received an application for the process either from the defense attorney or the prosecutor. The warrant is filled out in duplicate with the original going to the peace officer who will transport the prisoner and the copy to the file folder.

10. Writ of Habeas Corpus

A writ of habeas corpus is a court order directing a sheriff (or other person holding a prisoner in custody) to produce the prisoner and show why the prisoner is being held. The first step for a prisoner attempting to obtain a writ of habeas corpus is to file an application for the writ with the Clerk of an appropriate court. Any judge of the Court of Criminal Appeals, the district courts, or the county courts has power to issue a writ of habeas corpus and, in fact, must do so upon receipt of a proper application. No filing fee may be charged for filing an application.

Const. Art. 1, Sec. 12

CCP Art. 11.01
CCP Art. 11.05
CCP Art. 11.051

Every provision relating to the writ of habeas corpus must be most favorably construed in order to give effect to the remedy, and to protect the rights of the person seeking relief under it.

CCP Art. 11.04

Next, the District Clerk must determine whether the writ application is being made "pre" or "post" conviction and whether the judgment imposes the penalty of death. The distinguishing factor between types of applications for writs of habeas corpus is whether there has been a conviction entered. While the practice has almost always been to distinguish between "pre-trial" and "post-conviction" writs, the Code of Criminal Procedure distinguishes primarily between writ applications in cases in which no conviction is entered and applications in cases where there is a final felony conviction without the death penalty.

CCP Art. 11.07, Sec. 2
CCP Art. 11.07, Sec.

a. Pre-Conviction Application for Writ of Habeas Corpus

For pre-conviction applications, it is suggested that a numerical extension, such as a dash and a "1" (i.e, "-1"), be added after the case number to designate the first writ, a "-2" for the second writ, etc. The Clerk should:

CCP Art. 11.07, Sec. 2

i. Determine in which case to file the application (i.e., deciding which case number to assign to the application). Ideally, the District Clerk will maintain a separate "writ" docket for the purpose of assigning case numbers to applications which pertain to confinement for an offense which has not yet been charged in the district court:

   If the applicant (defendant) is being confined pursuant to a charging instrument which is already filed in the district court, the application may be filed either in the pending case or as a new case on the writ docket (each District Clerk's office should formulate its own policy).

   If the applicant is **not** being confined pursuant to a charging instrument which is already filed in the district court, the application should be filed as a new case on the writ docket. If a separate writ docket is not maintained, the application should just be filed as a new felony case.

ii. File the original application and file-mark two copies of the application.

   When the applicant or his attorney files the original application, the applicant or his attorney should also furnish the District Clerk with two copies of the application. The Clerk will file-mark the two copies. If the application is made *pro se*, copies may not be demanded; however if the applicant is not confined and presents the application in person, the District Clerk may require that an original and two copies be presented (the Code of Criminal Procedure neither authorizes nor forbids this--each District Clerk's office should formulate its own policy). If the application is made *pro se* and the applicant is confined, the Clerk should make two copies of the application and file-mark them.

iii. Mail or deliver some form of acknowledgment of filing to the applicant (a postcard or a file-marked copy noting the date of the filing of the application should suffice).

iv. Mail or deliver a file-marked copy of the application to the district attorney's office.

v. If the application is made *pro se*, presume that the applicant intended it to be presented to the district judge. Mail or deliver a file-marked copy of the application to the judge's office.

vi. After the writ application has been filed, the applicant has been delivered an acknowledgment, and the district attorney and district judge have received copies, there are no further requirements of the District Clerk unless the trial court acts upon the writ, and then **only** in the event that notice of appeal is given.

When a written notice of appeal from a judgment or an order in habeas corpus proceedings is filed, the appellate procedures are the same as any criminal case, except that the District Clerk has only fifteen (15) days to prepare, certify, and forward the Clerk's record to the Court of Appeals. If the appellant requests, the court reporter must also prepare and certify the reporter's record and forward it to the Court of Appeals within fifteen days after the notice of appeal is filed. On reasonable explanation, the appellate court may shorten or extend the time to file the record.

TRAP Rule 31.1

The Clerk's record and reporter's record shall be prepared as in any criminal case.

TRAP Rule 34

b. Post-Conviction Application for Writ of Habeas Corpus/Non-Death Penalty Cases

For post-conviction applications, it is suggested that a letter extension, such as a dash and an "A" (i.e., "-A"), be added after the case number to designate the first writ, a "-B" for the second writ, etc. When the writ application is a post-conviction application in which the applicant seeks relief from a felony judgment imposing a penalty other than death, the Clerk should:

i. Determine whether the application is invoking Article 11.07, Section 3 of the Code of Criminal Procedure or the Texas Constitution. If the application invokes neither or is unclear, presume that the application is made pursuant to Article 11.07, Section 3.

If the application is made under the Texas Constitution, follow the procedures utilized in pre-conviction applications. As the indictment is still "pending" within the meaning of Article 11.07, Section 2, the writ must be returnable in the county in which the indictment is pending (the trial court retains the discretion to decide whether to issue the writ).

CCP Art. 11.08
CCP Art. 11.10

If the application is made pursuant to Article 11.07, Section 3, the writ must be filed with the Clerk of the court in which the conviction being challenged was obtained. The Clerk shall then assign the application to that court. The Clerk should assign a case number ancillary to that of the conviction being challenged.

CCP Art. 11.07, Sec. 3

ii. Send a copy of the application by certified mail, return receipt requested, to the attorney representing the State in the particular trial court or obtain a signed acknowledgment of delivery of the application from the attorney.

iii. The attorney representing the State shall answer the application not later than the 15th day after the date the application is received.

CCP Art. 11.07, Sec. 3(b)

If the attorney for the State files an answer, the Clerk must mail or deliver to the applicant a copy of the answer. The Clerk must mail or deliver a copy of any motion or other pleading relating to an

CCP Art. 11.07, Sec. 7

application for writ of habeas corpus filed by the State to the applicant.

iv. The trial court has twenty (20) days in which to act upon the application after the State has had its opportunity to respond.

CCP Art. 11.07, Sec. 3(c)

If the trial court has not acted upon the application within thirty-five days after the State received a copy of the application, or if the trial court decides that there are no previously unresolved facts material to the confinement of the applicant, the District Clerk is required to immediately forward a transcript to the Court of Criminal Appeals.

The writ transcript must include a copy of the application for post-conviction writ of habeas corpus, any answers filed, and a certificate reciting the date upon which the finding was made or the date upon which the thirty-five (35) days expired.

The transcript should have a cover sheet which lists the applicant's name, the county, the date of conviction, the offense, the sentence, the Court of Appeals' case number or South Western Reporter citation (if appeal was taken from the conviction), the designation of the convicting court and the name of the present presiding judge.

v. If the trial court enters an order designating the issues of fact to be resolved, the District Clerk has no further duties (other than mailing or delivering a copy of the order to the applicant) until such time as the trial court resolves such factual issues. The Clerk must mail or deliver a copy of any order relating to a writ of habeas corpus to the applicant.

CCP Art. 11.07, Sec. 3(d)
CCP Art. 11.07, Sec. 7

vi. When the trial court enters findings of fact or approves the findings of a person designated to make them, the District Clerk is required to immediately forward a transcript to the Court of Criminal Appeals.

CCP Art. 11.07, Sec. 3(d)

The writ transcript must include a copy of the application for post-conviction writ of habeas corpus, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the trial court in resolving the factual issues.

The transcript should have a cover sheet which lists the applicant's name, the county, the date of conviction, the offense, the sentence, the Court of Appeals' case number or South Western Reporter citation (if appeal was taken from the conviction), the designation of the convicting court, and the name of the present presiding judge.

c. Post-Conviction Application for Writ of Habeas Corpus/Death Penalty Cases

Article 11.071, Code of Criminal Procedure, establishes the procedure for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.

CCP Art. 11.071

Representation by Counsel. An applicant shall be represented by competent counsel unless the applicant has elected to proceed *pro se* and the convicting trial court finds, after a hearing on the record, that the applicant's election is intelligent and voluntary. The convicting court shall also determine if the defendant is indigent, and if he is, whether he desires appointment of counsel for the purpose of a writ of habeas corpus.

CCP Art. 11.071, Sec. 2

***Subsection (d), Section 2, Article 11.071,*

After making such determinations, and not later than 30 days after the findings are made, the convicting court shall appoint counsel, unless the applicant is proceeding *pro se* or has retained counsel. When appointing counsel, the convicting court must adhere to the rules adopted by the court of criminal appeals, including the provision that an attorney appointed may not have a finding of ineffective assistance of counsel during any capital case.

Code of Criminal Procedure is repealed effective January 1, 2010.

On appointing counsel under this section, the convicting court shall immediately notify the Court of Criminal Appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

Filing of Application. An application for a writ of habeas corpus, returnable to the Court of Criminal Appeals, must be filed in the convicting court not later than the 180th day after the date the convicting court appoints counsel, or not later than the 45th day after the date the State's original brief is filed on direct appeal with the Court of Criminal Appeals, whichever date is later.

CCP Art. 11.071, Sec. 4(a)

The convicting court may, after notice and an opportunity to be heard by the attorney representing the state, grant the applicant one 90-day extension that begins on the filing date applicable to the defendant under Subsection (a). Either party may request that the court hold a hearing on the request. If the convicting court finds that the applicant cannot establish good cause justifying the requested extension, the court shall make a finding stating the fact and deny the request for the extension. An application filed after the appropriate filing date is presumed untimely.

CCP Art. 11.071, Sec. 4(b) Sec. 4(c)

Untimely Application or No Application/Convicting Court. If the convicting court receives an untimely application or determines that after the filing date that is applicable to the applicant under Subsection (a) or (b) no application has been filed, the convicting court immediately, but in any event within 10 days, shall send to the court of criminal appeals and to the attorney representing the state a copy of the untimely application, with a statement of the convicting court that the application is untimely, or a statement of the convicting court that no application has been filed within the time periods required by Subsections (a) and (b); and any order the judge of the convicting court determines should be attached to an untimely application or statement under Subdivision (1).

CCP Art. 11.071, Sec. 4(d)

A failure to file an application before the applicable filing date constitutes a waiver of all grounds for relief that were available to the applicant before the deadline, except as provided under Article 11,071, Section 4A.

Untimely Application or No Application/Court of Criminal Appeals. The Court of Criminal Appeals may command counsel for the defendant to show cause why an application was filed untimely or not filed at all. The Court of Criminal Appeals may dismiss the application; may permit counsel to continue to represent the defendant and establish a deadline for filing an application (not more than 180 days from order); or may appoint new counsel and establish an application deadline (not more than 270 day from appointment) If the defendant filed an untimely application or failed to file before the required date on or before September 1, 1999, the Court of Criminal Appeals shall appoint new counsel and establish a filing deadline (not more than 270 days from appointment) for the application.

CCP Art. 11.071, Sec. 4A

If a new filing deadline is established and/or new counsel is appointed, the Court of Criminal Appeals shall notify the convicting court.

Subsequent Application. If the convicting court receives a subsequent application, the Clerk of the court shall attach a notation that the application is a subsequent

CCP Art. 11.071, Sec. 5(b)

application and assign to the case a file number that is ancillary to that of the conviction being challenged. The Clerk shall immediately send the Court of Criminal Appeals a copy of the application, the notation, the order scheduling the applicant's execution, if scheduled, and any order the judge of the convicting court directs to be attached to the application.

Issuance of Writ. If a timely application for a writ of habeas corpus is filed in the convicting court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. If the convicting court receives notice that the requirements of Section 5, Article 11.071, Code of Criminal Procedure, for consideration of a subsequent application have been met, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. HB 1646 (82nd Legislature) amended Section 6, Article 11.071, Code of Criminal Procedure, by adding Subsections (b-1) and (b-2). The new subsections relate to the appointment of counsel and compensation and reimbursement of expenses for counsel appointed.

CCP Art. 11.071, Sec. 6(a) Sec. 6(b) HB 1646 (82nd Legislature)

The Clerk of the convicting court shall make an appropriate notation that a writ of habeas corpus was issued; assign to the case a file number that is ancillary to that of the conviction being challenged; and send a copy of the application by certified mail, return receipt requested, to the attorney representing the state in that court.

CCP Art. 11.071, Sec. 6(c)

The Clerk of the convicting court shall promptly deliver copies of documents submitted to the Clerk to the applicant and the attorney representing the state.

CCP Art. 11.071, Sec. 6(d)

Answer to Application. The state shall file an answer to the application for a writ of habeas corpus not later than the 120th day after the date the state receives notice of issuance of the writ. The state may request from the convicting court an extension of time in which to answer the application by showing particularized justifying circumstances for the extension, but in no event may the court permit the state to file an answer later than the 180th day after the date the state receives notice of issuance of the writ. The Clerk's role is to file the appropriate documents and send copies as required.

CCP Art. 11.071, Sec. 7(a)

Findings of Fact Without Evidentiary Hearing. Not later than the 20th day after the last date the state answers the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

CCP Art. 11.071, Sec. 8(a)

If the convicting court determines the issues do not exist, the parties shall file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

CCP Art. 11.071, Sec. 8(b)

After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made, whichever occurs first.

CCP Art. 11.071, Sec. 8(c)

The Clerk of the court shall immediately send to the Court of Criminal Appeals a copy of the application, answer, orders entered by the convicting court, proposed findings of fact and conclusions of law, and findings of fact and conclusions of law.

CCP Art. 11.071, Sec. 8(d)

The Clerk of the court shall immediately send to counsel for the applicant or, if the applicant is proceeding *pro se*, to the applicant, a copy of orders entered by the convicting court, proposed findings of fact and conclusions of law and findings of fact and conclusions of law entered by the court.

Evidentiary Hearing. If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state answers the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved.

CCP Art. 11.071, Sec. 9(a)

The convicting court shall hold the evidentiary hearing not later than the 30th day after the court enters the order designating issues under Section 9(a). The convicting court may grant a motion to postpone the hearing, but not for more than 30 days, and only if the court states, on the record, good cause for delay. The presiding judge of the convicting court shall hold the hearing, unless another judge conducted the trial. Then that judge may preside over the evidentiary hearing, provided he meets the qualifications under Sections 74.054 and 74.055 of the Government Code.

CCP Art. 11.071, Sec. 9(b) Sec. 9(c)

The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the Clerk of the convicting court.

CCP Art. 11.071, Sec. 9(d)

The parties shall file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first.

CCP Art. 11.071, Sec. 9(e)

The Clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals a copy of the application; the answers and motions filed; the court reporter's transcript; the documentary exhibits introduced into evidence; the proposed findings of fact and conclusions of law; the findings of fact and conclusions of law entered by the court; the sealed materials such as a confidential request for investigative expenses; and any other matters used by the convicting court in resolving issues of fact.

CCP Art. 11.071, Sec. 9(f)

The Clerk of the convicting court shall immediately transmit to counsel for the applicant or, if the applicant is proceeding *pro se*, to the applicant, a copy of orders entered by the convicting court; proposed findings of fact and conclusions of law; and findings of fact and conclusions of law entered by the court.

The Clerk of the convicting court shall forward an exhibit that is not documentary to the Court of Criminal Appeals on request of the court.

CCP Art. 11.071, Sec. 9(g)

Review by Court of Criminal Appeals. The Court of Criminal Appeals shall expeditiously review all applications.

CCP Art. 11.071, Sec. 11

d. Post-Conviction Application for Writ of Habeas Corpus/Community Supervision Cases

For applications under Code of Criminal Procedure Article 11.072, the Clerk must assign a case number ancillary to the original case number. It is suggested that a letter extension, such as a dash and an "A", be used for the first writ; a dash and a "B" for the second, etc.

CCP Art. 11.072, 4(b)

An application for a writ of habeas corpus in a felony or misdemeanor case seeking relief from an order or judgment of conviction ordering community supervision is filed with the Clerk of the court in which the community supervision was imposed. An application may not be filed under this section if the requested relief could be obtained

CCP Art. 11.072, Sec. 2(a) Sec. 3(a)

under Code of Criminal Procedure Article 44.02 or Rule of Appellate Procedure 25.2.

The applicant is required to serve a copy of the application on the attorney representing the state. The state has 30 days in which to answer, but no answer is required. The court may grant the state one 30-day extension to answer on a showing of good cause. Any answer filed by the state must be served on the applicant by certified mail, return receipt requested, or by personal service.

CCP Art. 11.072, Sec. 5

No later than 60 days after the day the state's answer is filed, the court shall enter a written order granting or denying the application. The court may order a hearing, but one is not required. If a hearing is ordered, it cannot be held before the eighth day after the state and the applicant are provided notice of the hearing.

CCP Art. 11.072, Sec. 6

When the order is entered, the Clerk must immediately send a copy of the order to the applicant and to the state by certified mail, return receipt requested.

CCP Art. 11.072 Sec 7(b)

11. Commitments

A "commitment" is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. A commitment must have the following: that it run in the name of "The State of Texas"; that it be addressed to the sheriff of the county to the jail of which the defendant is committed; that it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant; that it state to what court and at what time the defendant is to be held to answer; when the prisoner is sent out of the county where the prosecution arose, the warrant of commitment shall state that there is no safe jail in the proper county; and if bail has been granted, the amount of bail shall be stated in the warrant of commitment.

CCP Art. 16.20

All commitments to prison in criminal cases are processes of the court and are prepared by the Clerk. They may be issued only after the judge has signed and handed down a sentence (order of commitment) to the Clerk. Orders of commitment may come as primary punishment for a felony or secondary punishment as a result of revocation of probation. Except in rare cases, commitments from district courts will be to a state correctional institution.

The Texas Department of Criminal Justice ("TDCJ") may decline to accept defendants unless the county has used the prescribed standardized judgment form to which those instruments applicable to the offense have been attached. For a list of the standard forms, please see Chapter III, Section C-4-c (page III-7). The standardized felony judgment forms can be accessed through the hyperlink (click on the underlined text above), or directly from the website at http://www.txcourts.gov/rules-forms/forms.aspx. A pen packet document checklist must also accompany every prisoner transferred to TDCJ. The checklist and accompanying instructions can be accessed directly from the website at http://www.tdcj.state.tx.us/divisions/cid/cid_support_ops_class_pen_packet.html The checklist names those instruments which should be attached to the standardized judgment form, if available. The instruments should be checked off on the checklist or shown to be not available or not applicable.

CCP Art. 42.09, Sec. 8

> ***NOTE:*** *A recent attorney general opinion states that a felony judgment must contain the information specified in Article 42.01, Section 1, Code of Criminal Procedure. This information includes the crime victim's name and address. However, the crime victim information must be redacted before the judgment can be made public.*

AG Op. GA-0220 (2004)

Procedurally, TDCJ requirements, such as the victim impact statement, the criminal history information, presentence investigation report, psychological or psychiatric evaluations, copy of any detainer, a written description of a hold or warrant, etc., will be provided by the prosecuting attorney's office, sheriff's office or others, but should be assembled by the Clerk with those instruments which the Clerk will provide. The Clerk must provide copies of the indictment and standardized judgment form in every case and, if applicable, the order revoking community service or change of venue statement.

When issuance of commitment is completed, the date of issuance should be noted in the criminal file and on the file folder.

C. ISSUANCE OF PROCESSES – CIVIL

The District Clerk, as an officer of the court, is to issue all processes necessary for proper disposition of each civil case. Most processes will be requested by the parties to the suit and in some cases approval of the judge is necessary. All processes must carry the signature of the Clerk, the seal of the court and the date of issuance. *TRCP 15*

The plaintiff or his attorney may prepare the appropriate citation for the defendant. The citation must be in the form required and must be served as prescribed by the Rules of Civil Procedure. The Clerk may charge a fee for the issuance of a citation; however, merely affixing the court seal shall not constitute issuance. The Clerk shall not charge for signing his or her name and affixing the seal to a citation prepared by a plaintiff or the plaintiff's attorney. *Civ. Prac. & Rem. Code Sec. 17.027*

1. Citation

A citation is an official notice of legal action. It is issued to defendants in civil lawsuits (including third-party defendants and defendants sued pursuant to counterclaims and cross-claims) notifying them that a case has been filed. The citation does not usually require personal appearance but does demand a written answer filed "on or before the Monday next after the expiration of twenty days after the date of service" of the citation. *TRCP 99 TRCP 38 TRCP 97*

Procedurally, the citation is issued in the following manner:

- On a blank citation form, enter the defendant's name, court of jurisdiction, date original petition was filed, case file number, style of the case, name and address of the attorney for the plaintiff (otherwise the address of the plaintiff), address of the Clerk, and the date of issuance of citation. The defendant's name is obtained from the petition. *TRCP 99*
- The citation must include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." *TRCP 99(c)*
- A copy of the relevant pleading is attached to the citation.
- Affix the seal of the court and sign the citation both inside and out.
- A separate citation is issued to each defendant named in the petition.
- The citation and the attached copy of the relevant pleading are given to the sheriff, constable or other authorized person for service and return of the original.

- Both the issuance of the citation and its return are noted in the civil file docket and on the case jacket. After the return, the citation is stored in the case folder.

- The Clerk is entitled to collect the standard fee for every citation issued. The fee should be noted in the civil file docket. *Gov't Code Sec. 51.317*

2. Citation for Delinquent Taxes

Citations for tax suits are issued on a different form from standard citations. The form must list the taxing unit(s) initiating the suit, the amount of taxes due (by year), and a description of the property in question. The citation must also show the names of all taxing units which assess and collect taxes on said property not made parties to the suit. All other procedures are the same as for regular citations. A copy of the original petition need not be attached or served. *TRCP 117a(4)*

3. Citation by Publication

When the defendant in a case cannot be located for personal service, a citation by publication may be substituted. The plaintiff should submit an affidavit swearing that the defendant's whereabouts are unknown. The citation should contain the names of the parties, a brief statement of the nature of the suit, a description of any property involved, and the interest of the named or unknown defendant(s). Several defendants can be named in one citation. The citation should command the defendant(s) to appear in court before 10:00 a.m. of the first Monday after the expiration of 42 days from the date of issuance. This is in contrast to the 20 day appearance period for a regular citation. The citation by publication is served by the sheriff or by the Clerk by having it published in the newspaper once a week for 4 consecutive weeks. *TRCP 109 TRCP 114 TRCP 116*

Different rules apply to suits affecting the parent-child relationship and divorce suits. See Chapter XI, Family Law, for details.

4. Subpoenas

Civil subpoenas are issued in duplicate with the name of only one party on each instrument. It is suggested that a local rule of court be adopted by the court(s) in the Clerk's county which requires that a sworn, written application for the issuance of a civil subpoena be filed with the Clerk, as is required for a criminal subpoena. *TRCP 176*

Note that the subpoena range in a civil case is 150 miles, measured from the county of prosecution to the witness' residence or place of service. Depositions and requests for production are exempted from this requirement. However, they must be conducted in the county in which the witness resides, is employed, or regularly conducts business in person. The witness' appearance may be compelled under Rules of Civil Procedure 199.3 and 200.2. *TRCP 176.3 TRCP 199.2 TRCP 199.3 TRCP 200.2*

a. Witness Fees

A witness, other than a witness summoned by a state agency, is entitled to $10 dollars for each day the witness attends court. This fee includes the entitlement for travel and the witness is not entitled to any reimbursement for mileage traveled. *Civ. Prac. & Rem. Code Sec. 22.001(a)*

The party who summons the witness must pay that witness's fee for one day, at the time the subpoena is served on the witness. *Sec. 22.001(b)*

The witness fee must be taxed in the bill of costs as other costs. *Sec. 22.001(c)*

b. Fees for Witnesses Summoned by a State Agency

A witness summoned by a state agency is entitled to receive from the agency: *Sec. 22.003(b)*

- One dollar for each day the witness attends court;
- Mileage at the rate provided by law for state employees if the witness uses the witness's personally owned or leased motor vehicle to attend court;
- Reimbursement of the witness's transportation expenses if the witness does not use the witness's personally owned or leased motor vehicle to attend court; and
- Reimbursement of the witness's meal and lodging expenses while attending court if the court is at least 25 miles from the witness's place of residence.

A state agency may not pay a commercial transportation company or a commercial lodging establishment or reimburse a witness for transportation, meal, or lodging expenses at a rate that exceeds the maximum rates provided by law for state employees. *Civ. Prac. & Rem. Code Sec. 22.003(d)*

After receiving the witness's affidavit, the court Clerk shall issue a certificate showing the fees incurred. *Civ. Prac. & Rem. Code Sec. 22.003(e)*

The witness fees must be taxed in the bill of costs as other costs. *Sec. 22.003(f)*

5. Depositions in Foreign Jurisdictions

In general, a party may take a deposition on oral examination or written questions of any person or entity located in another state or a foreign country for use in proceedings in this State. The deposition may be taken by notice; letter rogatory**,** letter of request, or other such device; agreement of the parties; or court order. *TRCP 201.1*

By Notice. The same procedures are followed for taking depositions within the state of Texas, except the deposition officer may be a person authorized to administer oaths in the place where the deposition is taken.

By Letter Rogatory. On motion by a party, the court in which an action is pending must issue a letter rogatory on terms that are just and appropriate, regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter must:

- be addressed to the appropriate authority in the jurisdiction in which the deposition is to be taken;
- request and authorize that authority to summon the witness before the authority at a time and place stated in the letter for examination on oral or written questions; and
- request and authorize that authority to cause the witness's testimony to be reduced to writing and returned, together with any items marked as exhibits, to the party requesting the letter rogatory**.**

By Letter of Request or Other Such Device. On motion by a party, the court in which an action is pending, or the Clerk of that court, must issue a letter of request or other such device in accordance with an applicable treaty or international convention on terms that are just and appropriate. The letter or other device must be issued regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter or other device must:

- be in the form prescribed by the treaty or convention under which it is issued, as presented by the movant to the court or Clerk; and
- must state the time, place and manner of the examination of the witness.

Objections to Form of* Letter Rogatory*, Letter of Request, or Other Such Device. In issuing a letter rogatory**,** letter of request, or other such device, the court must set a time for objecting to the form of the device. A party must make any objection to the form of the device in writing and serve it on all other parties by the time set by the court, or the objection is waived.

Admissibility of Evidence. Evidence obtained in response to a letter rogatory, letter of request, or other such device is not inadmissible merely because it is not a verbatim transcript, or the testimony was not taken under oath, or for any similar departure from the requirements for depositions taken within this State under the Texas Rules of Civil Procedure.

Deposition by Electronic Means. A deposition in another jurisdiction may be taken by telephone, videoconference, teleconference, or other electronic means under the provisions of Rule 199.

6. Bill of Costs

The successful party to a suit shall recover all costs incurred from the opposing party(ies). *TRCP 131*

Since civil fees are prepaid, a bill of costs is not normally needed. In two instances, however, the instrument may be required. First, when the final judgment states that the defendant shall pay all court costs, the Clerk, if requested, may submit a bill of costs to the defendant. When the defendant pays the costs, the Clerk will refund the plaintiff's deposit. *TRCP 89*

Second, in situations involving motions to transfer venue, the Clerk prepares a bill of costs showing that costs have been collected in the original court. Costs incurred prior to the transfer are taxed against the plaintiff. *TRCP 89*

When an execution is issued by the Clerk, a correct copy of the bill of costs taxed against the defendant must be attached to the writ. (See "Execution"--chapter VIII.) *TRCP 622*
TRCP 629

7. Notice of Default Judgment

If the defendant does not answer the plaintiff's petition or contest the suit, then a default judgment may be rendered against the defendant after the citation with proof of service has been on file with the Clerk of the court 10 days, not including the day of filing and the day of judgment. The Clerk must mail a notice to the defendant at his last known address advising him of this judgment. The last known mailing address of the defendant must be certified in writing by the attorney for the plaintiff. *TRCP 239*
TRCP 239a
TRCP 107

The notice contains the case number, case style, court in which the case is pending, names of the parties, and the date the judgment was signed. The Clerk must note that the notice was mailed on the docket. Like notice is to be mailed to all parties upon the signing and filing of a final judgment or other appealable order. *TRCP 239a*

8. Notice of Final Judgment or Other Appealable Order

When the final judgment or other appealable order is signed, the Clerk shall immediately give notice to the parties or their attorneys of record advising that the order *TRCP 306a*

or judgment was signed. Notice is to given by first class mail. The date the judgment or order is signed, not the day it was mailed, determines the periods of time for motions for new trial, motions to modify judgments, motions to vacate judgment and other such motions as may be filed following the judgment or other final order.

D. SPECIAL TYPES OF SERVICE – CIVIL

Process in civil cases may be served by a sheriff or constable, by any person authorized by law or court order, and by any person certified under order of the Supreme Court. Effective July 1, 2005, the Supreme Court approved amendments to Rules 103 and 536(1) of the Texas Rules of Civil Procedure governing statewide certification of process servers. Private process servers must be certified by the Process Server Review Board, whose members are appointed by the Supreme Court. Further information is available from the Process Server Review Board website http://www.txcourts.gov/jbcc/process-server-certification.aspx

The processes issued by the Clerk are commonly served by the sheriff or constable, but this is not mandatory.

TRCP 103
TRCP 536(a)

1. Service by Registered or Certified Mail

Unless the citation or an order of the court otherwise directs, the citation may be served by the Clerk, sheriff, or constable by mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto. When service is by registered or certified mail, the Clerk's or officer's return must also contain the return receipt with the addressee's signature.

TRCP 103
TRCP 106(a)
TRCP 107

2. Service by Authorized Persons Other than Sheriffs or Constables

Courts are permitted to authorize persons (who are not less than 18 years of age) other than sheriffs or constables to serve citations as well as other processes. No person who is a party to or interested in the outcome of a suit shall serve any process. The order authorizing a person to serve processes may be made without written motion and no fee shall be imposed for issuance of such order. Included among those authorized are private process servers certified by the Process Server Review Board.

TRCP 103

3. Substitute Service

When regular service by personal delivery or through registered or certified mail cannot be made, the court may authorize substitute service. Service of citation may be made by delivery to anyone over the age of 16 at the location (usually the defendant's usual place of abode or business) specified in the affidavit supporting the motion for substitute service or in any way that will be reasonably effective in giving the defendant notice of the suit.

TRCP 106(b)

4. Serving the Secretary of State

When the need arises to serve process on an individual or a corporation, partnership or other business entity conducting business in Texas with no registered representative in the State of Texas, the Secretary of State is served instead. The original and two (2) copies of the process may be forwarded to the sheriff of Travis County who in turn serves them on the Secretary of State. Service may also be made on the Secretary of State, Citations Unit, Post Office Box 12079, Austin, Texas 78711-2079, by certified mail, return receipt requested, by the Clerk of the court or by the party or the representative of the party. The Secretary of State charges a $40.00 fee for maintaining a record of service

Civ. Prac. & Rem, Code Secs. 17.026, 17.044, 17.045

Gov't Code Sec. 405.031(a)(4)

of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or nonresident natural person.

Civ. Prac. & Rem. Code Sec. 17.045

When there is substituted service on the Secretary of State, two copies of the process are delivered to the Secretary of State. The plaintiff must identify the appropriate address for the defendant (that is, the plaintiff must identify the forwarding address for the process, e.g. "home", "home office", "principal place of business", etc.). The Secretary of State will forward by registered or certified mail, as appropriate under the statute under which service is being made, the process to the defendant named at the address provided.

1 TAC §71.21

Whitney v. L & L Realty Corp. 500 S.W.2d 94 (1973)

The Texas Supreme Court has held that in order for a valid default judgment to be entered against a defendant, there must be a showing in the record that the Secretary of State served the defendant. (Upon request, the Secretary of State, for a fee of $15.00, will return a certificate of service stating that the process was forwarded to the defendant. 1 TAC §71.21(c).) The Supreme Court of Texas also held that service on an employee of the Secretary of State is sufficient to effect service on the Secretary of State.

Capitol Brick, Inc. v. Fleming Mfg. Co., Inc. 722 S.W.2d 399 (1986)

Bonewitz v. Bonewitz 726 S.W.2d 227 (1987)

The Third Court of Appeals expanded on this and held that the Secretary of State is required to forward the service to the named defendant, but that time begins running on the date the Secretary of State is served, not the date the defendant actually receives the service

Gov't Code Sec. 405.031(a)

5. Out-of -State Service

TRCP 108

The form of notice to a defendant who is absent from the state, or is a nonresident of the state, is the same as for citation to a resident defendant, and may be served by any disinterested person competent to serve a resident defendant. The return of service should be endorsed on or attached to the original notice and shall be in the same form as the return of service for a resident defendant. It should be signed and sworn to by the party making such service before some officer authorized by laws of this state to take affidavits.

6. Service of Process in Foreign Countries

TRCP 108a

Service may be had on a party in a foreign country by several methods: in the manner prescribed by the foreign country's laws; as directed by the foreign country in response to a letter rogatory or letter of request; as provided by TRCP Rule 106; pursuant to the terms and provisions of any applicable treaty or convention; by diplomatic or consular officials when authorized by the U.S. State Department; or by any other method directed by the court that is not prohibited by the law of the country where service is to be made.

Whatever method is used, it must be reasonably calculated to give actual notice of the proceedings to the defendant in time to answer and defend the suit. A defendant served under this rule is required to appear and answer in the same manner and time, and under the same penalties, as if he or she had been personally served in Texas.

Proof of service may be made as prescribed by the laws in the foreign country in which service was made, by order of the court, by Rule 107, or by a method provided in any applicable treaty or convention.

7. Out-of -State Service/Non-Resident Motor Vehicle Operators

Civ. Prac. & Rem. Code Sec. 17.062

To serve nonresident motor vehicle operators, the chairman of the Texas Transportation Commission may be served.

8. Out-of -County Service

Service by sheriffs and constables is no longer restricted to service in their county; therefore, the sheriff or constable may serve process in a neighboring county or elsewhere that it is economically feasible. Process may still be mailed to a sheriff or constable in the county in which service is required. *TRCP 103*

9. Essential Need (Occupational) License

If the petitioner's license was suspended following a conviction for driving while intoxicated or driving under the influence of drugs, the Clerk shall send by certified mail a copy of the verified petition filed by the petitioner that sets forth in detail the need for operating a motor vehicle and notice of the hearing on the petition to the attorney representing the state. *Transp. Code Sec. 521.243*

If, after the hearing on the petition, the court enters an order finding an essential need for operating a motor vehicle, the Clerk must send a certified copy of the petition and the court order setting out the judge's findings and driving privilege restrictions to the Department of Public Safety. *Transp. Code Sec. 521.249*

10. Serving the Commissioner of Insurance

If service of legal process is to be effected on a company or organization by serving the commissioner of insurance, the process may be served personally as set out in Insurance Code Section 3(a) or by certified or registered mail. The address of the Commissioner of Insurance is 1110 San Jacinto, Austin, Texas 78701-1988. A fee of not more than $50.00, payable by check or money order to the Texas Department of Insurance, must be provided for each legal process served on the commissioner, and the fee must accompany each service of process. Ins. Code *Sec.804.201*

CHAPTER 5

INDEXING AND RECORDING OF MINUTES

A. INTRODUCTION

CCP Art. 2.21 Art. 33.07

Gov't Code Sec. 51.303

The indexing and recording of court minutes are the very first duties of the District Clerk mentioned in both the criminal and civil statutes of the State of Texas. Indeed, at the time these statutes were first adopted, the Clerk's responsibilities to the court consisted of little more than preserving a record of the court's actions. Even today, while the Clerk's duties have grown tremendously more complex, the indexing and recording of the court's minutes remain of basic importance to the judicial process.

In light of changing technologies, the law no longer requires that minutes and indexes be kept in record books or well-bound books. Therefore, if the Clerks minutes are kept on microfilm and/or the indexes are computerized, the remaining paragraphs of this chapter should be adapted to the offices particular system. For additional information on microfilming records, see "Records Management," Chapter XII.

B. CRIMINAL MINUTES

1. Index

CCP Art. 33.07

Gov't Code Sec. 51.303

The index is the key to access to the criminal minutes. There should be a least one entry in the index to criminal minutes for every case filed with the Clerk. Where there is more than one defendant in a case, the name of each defendant should be indexed. The sequence of the index is alphabetical by last name of the defendant. In criminal cases there is no need to keep a cross-index of plaintiffs because the plaintiff is always the State of Texas. If the county has more than one court hearing criminal cases, a separate index may be kept for the minutes of each court.

The format of the index is not set by law but has been standardized somewhat by convention to contain the following information:

- Date filed
- Case number — Inclusion of the case number is important because all of the Clerk's case records will be filed in numerical sequence rather than alphabetically.
- Surname and given name of the defendant — Many cases are originally filed using the defendant's alias. The case will be prosecuted using the defendant's real name when that becomes known, and the Clerk must re-index the case.
- Offense
- Volume and page of minutes — Make an entry each time a minute is recorded. When a minute mentions more than one defendant, cross-index the minute for each defendant concerned.
- Penalty — Enter fine, sentence, and/or commitment. If the case is dismissed, state so and enter the date of dismissal.

- Date convicted — Enter at time of conviction.

2. Preparation and Recording

The preparation of criminal minutes differs greatly from the preparation of probate and civil minutes. In civil cases, attorneys prepare all documents that eventually become case minutes. The Clerk merely has to file and record them. For criminal minutes, no such service is available. Judges, as a rule, do not actually prepare the written orders and judgments that are verbally handed down in open court. The usual practice is for the judge to note the judgment, punishment, and other pertinent data on the docket and for the Clerk or the prosecuting attorney to actually prepare the instrument.

a. Preparation of Minutes

Rather than trying to type each item of minutes, most District Clerks have adopted the use of forms. A variety of forms are prepared ahead of time that cover the majority of types of judgments and orders. Working from the judge's docket sheet, the Clerk determines what form is needed, fills in the requisite data, and returns the completed form to the judge for his signature.

Exactly what constitutes the criminal minutes varies somewhat from office to office. At a minimum, judgments and dismissals must be recorded. Some Clerks prefer to record all instruments signed by the judge, and a few Clerks record all instruments filed for record so that the minutes are a duplication of the case jacket. Consultation between the Clerk, judge, and prosecuting attorney will determine what documents become minutes in each county.

b. Recording of Minutes

As in all of the Clerk's recording processes, the objective is to transcribe or copy essential instruments into a permanent record book. A set of criminal minutes may be kept for each district court that hears criminal cases. In practice, most courts operate in continuous session, hearing cases year round. Technically, however, court sessions may be divided into terms and the minutes for each term will have to be bound together. The Clerk should check local procedure on this matter.

To record the minutes, the Clerk:

- Receives the instrument and sees that all blanks are filled out and that the judge's signature is present.
- Determines what volume will be used and assigns the next unused page number to the instrument. (Write or stamp the volume and page number on the instrument.)
- Copies or transcribes the instrument.
- Inserts either the original instrument or the copy into the minute volume (practice varies).
- Notes the volume and page number in the index to criminal minutes, judge's docket sheet, criminal file docket, and case jacket.
- Files the instrument (or the copy) in the case jacket.

C. CIVIL MINUTES

1. Index

There should be an entry in the index to civil minutes for every party to a civil case. Separate indexes are maintained for the names of plaintiffs and the names of defendants. In cases where there is no defendant (ex parte suits), the case is indexed in the plaintiff's index.

Each index is created at the time a suit is filed. The sequence of the index is alphabetical by the party's last name. The index must cross-reference the other parties to the suit.

Gov't Code Sec. 51.303

The index for each party in the suit should contain the following information:

- Name of the party (whether an individual or a business firm). The name should be exactly as stated on the original petition. The names of additional parties to the suit are indexed as they enter the case.
- Name of the opposing party
- Date of filing
- Nature of the case
- Volume and page number of all minutes of the case

2. Preparation and Recording

The District Clerk may wish to record other instruments in the case minutes as well. The Clerk should consult with the judge in determining exactly what documents should be included in the civil minutes.

The recording process for civil minutes is similar to that for all other instruments recorded:

- The Clerk examines the instrument to see that it is complete and that the judge's signature is present.
- The volume and page number is determined and is written or stamped on each page of the instrument.
- The instrument is transcribed or copied.
- The copy is inserted into the current volume of the minutes.
- The volume and page number of the first page of the minutes is recorded in the index to civil minutes (for all parties), the civil file docket, the court docket, and on the outside of the case folder.
- The original instrument is filed in the case folder.

CHAPTER 6

ADMINISTRATIVE SUPPORT FOR DISTRICT COURTS

A. INTRODUCTION

Depending upon the custom in the local jurisdiction, the Clerk may be called upon to perform clerical duties for the district court other than the major responsibilities outlined elsewhere in this manual. In the smaller jurisdictions, this support may be limited because the Clerk does not have extra staff. In the larger counties, however, where the caseload for judges can be overwhelming, it is not uncommon for the Clerk to assign one or more deputies to each district judge to act as court administrators or administrative assistants.

It is not possible to write detailed procedure for this activity since it varies from county to county. Each Clerk may wish to expand upon this section to describe the most important duties of the local jurisdiction.

B. ADMINISTRATIVE SUPPORT IN THE COURTROOM

The Clerk may provide a variety of services to the judge in the courtroom to facilitate proceedings. A few of these services are outlined below:

- Provide all records from the Clerk's office necessary for courtroom proceedings. Before each case, the Clerk should present to the judge all pertinent documents, which may include the file folder, the judge's docket sheet, depositions, pleas, and new motions to be acted upon. *Gov't Code Sec. 51.303*
- Accept (and later file) all instruments introduced into open court by the attorneys.
- Impanel and swear in juries.
- Swear in witnesses.
- Take minutes of proceedings on the judge's docket sheet.

C. ADMINISTRATIVE SUPPORT OUTSIDE THE COURTROOM

The Clerk may facilitate the expeditious administration of justice by assisting the judge with some of his or her non-judicial tasks.

A few examples are listed below:

- Arrange all docket settings for the court. The Clerk must be familiar with which cases are ready for trial and approximately how much of the judge's time is required for each type of case. It is wasteful of the judge's time to prepare for a case when the attorneys are not ready to present it. Likewise, the judge will not need all day for an uncontested civil case but may need weeks for a serious criminal case. Effective scheduling of the judge's case load by the Clerk will make the court more efficient.
- Notify attorneys, bondsmen, and the sheriff of all scheduled proceedings. This will insure that attorneys and defendants are in the courtroom as scheduled and will prevent unnecessary delays.

- Arrange for juries when necessary.

- Arrange for the dismissal of cases. Much of the backlog of both civil and criminal matters are cases that will never be tried for one reason or another. To clear these cases from the docket, the Clerk should periodically contact the attorneys of record and request that either motions for dismissal be entered or prosecution be initiated.

CHAPTER 7

REGISTRY OF THE COURT

A. GENERAL PROVISIONS

Each District and County Clerk must maintain a registry of the court to receive payments ordered tendered into the court's registry. In addition to money, the court may also order property to be held in the court's registry for the benefit of whomever it is ultimately adjudged to belong. According to the Attorney General, any money or property deposited with the court to "satisfy the result of a legal proceeding or to await the result of a legal proceeding" falls under the definition of funds and property to be held in the registry of court.

Local Gov't Code Sec. 117.001

AG Op. JM-1162 (1990)

AG L.O. 96-023 (1996)

The funds held in the registry of court do not belong to the county; rather, they are essentially held in trust by the Clerk to satisfy the result of a legal pleading or to await the outcome of a legal proceeding. For purposes of the registry of court, the Attorney General has defined a trust as "an equitable obligation under which the trustee is required to deal with the trust property for the benefit of the beneficiaries who have a vested interest in the trust funds."

Although the funds in the registry of court are construed as trust funds, the Clerk acts only in a custodial capacity in relation to funds held in the registry of court. A Clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

Local Gov't Code Sec. 117.0521

While there are no specific requirements in the code, the Clerk should keep a detailed record of the funds in the registry of court. The record should include the cause number, style of the case, instructions regarding the investment or disbursement of funds, and an accounting of all deposits and withdrawals.

By far the most common way of holding money in the registry of court is through a bank account, at a depository selected by the commissioners court. Types of accounts, whether they are interest-bearing, responsibilities of the Clerk, and withdrawal and transfer of funds are covered in detail in Section C of this chapter.

> ***NOTE:*** *Liability for Deposits Pending Suit*
>
> *A District Clerk who has custody of a sum of money, a debt, an instrument or other property paid to or deposited with a court pending the outcome of a cause of action must seal the property in a secure package in a safe or bank vault that is accessible to the court.*
>
> *Civ. Prac. & Rem. Code Sec. 7.002(a)*
>
> *The Clerk must keep an itemized inventory of property deposited with the court. The inventory is kept in the Clerk's office as part of his or her records. The inventory must list the disposition of the property and the account for which the property was received.*
>
> *Civ. Prac.& Rem. Code Sec. 7.002(b)*

B. TYPES OF FUNDS

There are many types of funds that are deposited into the registry of court.

They include:

- Civil court deposits — *Local Gov't Code Sec. 117.052(c)*
- Probate court deposits, including funds of minors and incompetent persons — *AG Op JM-1162 (1990)*
- Child support payments paid through the Clerk's office — *AG L.O. 96-023 (1996)*
- Interpleader funds
- Funds paid in satisfaction of a judgment
- Cash bonds
- Cash bail bonds
- Supersedeas bonds
- Money recovered by plaintiff in a suit in which minor or incapacitated person has no legal guardian — *Property Code Sec. 142.004(a)*
- Eminent domain deposits — *Property Code Sec. 21.021*
- Funds from execution sales — *TRCP 712*
- Excess funds from tax sales — *Tax Code Art. 34.03*

Some of the more common types of funds are discussed in more detail below.

1. Payment from Judgment

When a judgment is rendered, the judge may order that the amount of the judgment be paid into the registry of the court. This provides a court record that proper payment has been made. It is also common for funds to be held in the registry of court pending appeal.

The judgment debtor may request to pay a judgment into the registry even though not ordered to do so. The judgment debtor then has a record of payment in compliance with the judgment.

Once a payment is in the registry of court, the judgment creditor must have a court order to withdraw it.

2. Payment of Unclaimed Judgment

A judgment debtor may pay a judgment into the registry of court when the location of the judgment creditor is unknown. The payment must be made without offset or reduction for any claims of the debtor. — *Civ. Prac. & Rem. Code Sec. 31.008(a)*

The judgment debtor must prepare a recordable release of the judgment, which must recite the cause number, the court, the parties, the date of judgment, the amount of judgment, the amount paid into the court, and the date of release. The judge or the Clerk of court must execute the release on behalf of the creditor and issue the release to the debtor. The Clerk may not charge fees in connection with the execution or preparation of a release of judgment. — *AG Op. DM-174 (1992)*

Before being entitled to pay a judgment to a court under Section 31.008(a), Civil Practice Remedies Code, the judgment debtor must send a letter notifying the — *Civ. Prac. & Rem. Code Sec. 31.008(b)*

judgment creditor of the judgment, by registered or certified mail, return receipt requested, to all of the following:

- The judgment creditor's last known address
- The address appearing in the judgment creditor's pleadings or other court record, if different from the creditor's last known address
- The address of the judgment creditor's last attorney, as shown in the creditor's pleadings or other court record
- The address of the judgment creditor's last attorney, as shown in the records of the State Bar of Texas, if that address is different from the address shown in the creditor's pleadings or other court record

Civ. Prac. & Rem. Code Sec. 31.008(c)

If the judgment creditor does not respond to notice on or before the 15th day after the date on which the notice was sent, the judgment debtor may file an affidavit with the court stating the judgment debtor has provided the required notice, that the judgment creditor has not responded to the notice, and that the location of the judgment creditor is not known to the judgment debtor.

Civ. Prac. & Rem. Code Sec. 31.008(d)

The court holds the amount paid to it by the judgment debtor under Section 31.008(a), as well as interest earned on that amount in trust for the judgment creditor.

Civ. Prac. & Rem. Code Sec. 31.008(e)

The Clerk of the court must deposit the trust funds and any interest earned by the funds in the Clerk's trust fund account. The Clerk must pay the funds and any interest earned by the funds to the judgment creditor or to the successors to the rights of the judgment creditor. The Clerk may presume that the funds are payable to the judgment creditor unless the Clerk is furnished with a written assignment of the judgment.

Civ. Prac. & Rem. Code Sec. 31.008(f)

Funds held in the Clerk's trust fund account are subject to escheat under Chapter 72, Property Code.

Civ. Prac. & Rem. Code Sec. 31.008(g)

On occasion, the judgment creditor may refuse to accept payment of the judgment or may accept payment and refuse to sign a release of judgment. If the judgment debtor has complied with sections (b) and (c) noted above, the court, on its own motion or motion of either party, will hold a hearing to determine if the release should be filed. The court may direct the judgment debtor to prepare and file a recordable release with the Clerk if the court finds that either:

- The amount under the judgment has been paid into the registry of the court.
- The judgment creditor has accepted payment under the judgment but has refused to execute a release of judgment.

3. Payment of Judgment/Investment Trusts

Property Code Sec. 142.004

In nearly all cases where the recipient of the judgment is a minor child or an incapacitated person, the judge will order all funds paid into the registry for the Clerk to administer. In such cases, the funds will be invested by the Clerk, on written order of the court, in one of the following:

- The Texas Tomorrow Fund, established by Subchapter F, Chapter 54, Education Code

- In a financial institution doing business in Texas that is insured by the FDIC
- U.S. treasury bills
- An eligible interlocal investment pool, that meets the requirements of Sections 2256.016, 2256.017 and 2256.019 of the Government Code
- A no-load money-market mutual fund that is regulated by the SEC, has a dollar-weighted average stated maturity of 90 days or less, and includes in its investment objectives the maintenance of a stable net asset value of $1 per share

Property Code Sec. 142.008
Property Code Sec. 142.009

The court may order such funds to be paid as a structured settlement. In such a case, the funds must be invested in an obligation guaranteed by the U.S. government or an annuity contract that meets the requirements set forth in Section 142.009 of the Property Code. The party obligated to fund a structured settlement must provide a copy of the instrument that provides the funding and an affidavit from an independent financial consultant that specifies the present value of the structured settlement and the method by which the value is calculated.

A structured settlement under this section is not subject to interest payment calculations as set forth in Local Government Code Section 117.054.

These funds are placed in separate depository accounts, on order of the court. Interest earned on such funds is paid in the same manner as interest earned on the special registry account. (See Section C, this chapter.)

4. Specific Performance Bond Forfeiture

The proceeds of forfeited specific performance bonds are paid into the registry of court. The proceeds from such payment may be withdrawn by the damaged party upon order of the court.

5. Proceeds from Executions

TRCP 712

When a judgment is enforced by sheriff's execution, the proceeds of such executions are usually paid into the registry if return is made to the Clerk. This rule covers regular executions, orders of sale, sequestrations, and garnishments.

6. Cash Bonds

CCP Art. 17.02

AG Ops. DM-282 (1994) JC-163 (1999) JC-195 (2000)

Cash bonds are usually received by the sheriff or other arresting officer, and are receipted by the officer receiving them. The Attorney General has stated that these cash funds must be placed into the registry of the court once a case has actually been filed. Until a case is filed, the funds are not "pending the outcome of a legal proceeding" and thus are not subject to Local Government Code Chapter 117. The Attorney General has further opined that cash bonds are subject to the same administrative fees or portion of interest as any other funds held in the registry of court. HB 1658 (82nd Legislature), effective 9/1/11, amends Article 17.02 of the Code of Criminal Procedure. Any cash funds deposited under this article shall be receipted for by the officer receiving the funds and, on order of the court, be refunded, after the defendant complies with the conditions of the defendant's bond, to: any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or the defendant, if no other person is able to produce a receipt for the funds. The amended statute conflicts

with Section 117.055 of the Local Government Code, which requires Clerks to retain the lesser of $50 or 5% of the cash bond amount. Such a conflict has arisen before and was addressed in Attorney General Opinion No. JC-0163 from 1999. That opinion states that the last statute in time controls. Therefore, Clerks CANNOT continue to make the withholding of $50 or 5%.

7. Excess Funds

Tax Code Art. 34.03

The sale of property for delinquent taxes may generate excess funds over and above the amount of judgment. These funds must be turned over to the Clerk of the court issuing the order of sale for safekeeping. The Clerk is required to send notice to the former owner of the property that there are excess funds, and the retention period is two years from the date of sale. SB 886 (82nd Legislature), effective 9/1/11, amends Article 34.03(c) of the Tax Code by providing that any local government record data may be stored electronically in addition to or instead of source documents in paper or other media.

This chapter covers disposition of funds in Section D, Part 1.

C. DEPOSITORIES FOR REGISTRY FUNDS

Local Gov't Code Sec. 117.025
Local Gov't Code Sec. 117.027

By far the most common way of holding registry funds is to deposit them in special accounts in financial institutions selected by the commissioners court. If for some reason the commissioners court does not select a depository, the funds and/or property in the registry must be secured in an iron safe or a bank vault.

Local Gov't Code Sec. 117.001
Local Gov't Code Sec. 117.052

A "special account" is defined as an account in a depository in which registry funds are placed. If a depository has been selected, funds in the Clerk's custody for more than three days must be deposited into the special account. A "separate account" consists of funds transferred from a special account into a separate interest-bearing account. The accounts are held in the name of the Clerk depositing the funds.

Local Gov't Code Sec. 117.021

The code does not require that the special account earn interest, but the Clerk may certainly elect to have the special account bear interest. If the Clerk wishes to have an interest-bearing account for registry funds, he or she must make a written request to the commissioners court. The bank at which the funds will be held in an interest-bearing account must submit a certified check or a cashier's check in an amount equal to one half of one percent of the average daily balance of the registry funds held by the Clerk during the preceding year.

Local Gov't Code Sec. 117.003(a)

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

As a general rule, once funds are deposited into a special account, they may not be withdrawn except to pay the person entitled to the funds, upon court order. There are a few exceptions to the rule.

Local Gov't Code Sec. 117.053(a)

If the commissioners court selects a new depository, when the depository qualifies, the District Clerk must transfer the funds in a special account from the old depository to the new depository, and the Clerk may draw checks on the account(s) for this purpose.

Similarly, the Clerk must withdraw funds to transfer them to a separate account when directed to do so by a written order of a court. The separate account must be in one of the locations set out in Local Government Code Section 117.053(c).

An appeal bond will be paid without a written order of the court on receipt of mandate or dismissal. Also, funds deposited under Section 887, Texas Probate Code, may be paid without a written order of the court. Funds considered abandoned are turned over to the State Comptroller without any further order of the court.

Local Gov't Code Sec. 117.053(b)
Local Gov't Code Sec. 117.002

The Clerk is authorized to pay any or all of the interest earned on funds deposited in the registry, without court order, to the Internal Revenue Service to satisfy tax withholding requirements.

Local Gov't Code Sec. 117.003(b)

A depository selected under Subchapter B, Chapter 117, Local Government Code, must pay a check drawn by a District Clerk against funds deposited in the Clerk's name on presentment of the check at the county seat if the funds subject to the check are in the possession of the depository. If the depository is not located at the county seat, the depository must file a statement with the County Clerk of the county designating a place at the county seat where, and a person by whom, deposits by the Clerks will be received and checks drawn on the depository will be paid.

Local Gov't Code Sec. 117.056(a)
Local Gov't Code Sec. 117.056(b)

A District Clerk is not responsible for a loss of registry funds resulting from the failure or negligence of a depository. However, a District Clerk is not released from: liability for a loss of registry funds resulting from the Clerk's official misconduct, negligence, or misappropriation of the funds; or responsibility for keeping the registry funds safe until the Clerk deposits them in a depository selected under Subchapter B, Chapter 117, Local Government Code. After a District Clerk deposits the registry funds, the Clerk is relieved of the responsibility for keeping the funds secure.

Local Gov't Code Sec. 117.081(a)
Local Gov't Code Sec. 117.081(b)
Local Gov't Code Sec. 117.081(c)

D. DISBURSEMENT OF REGISTRY FUNDS

Unless otherwise provided for by statute or rule, registry funds are disbursed only by court order. Usually, although not always, funds are disbursed at the conclusion of a case.

When the Clerk receives an order from the court under whose jurisdiction the funds were deposited, he or she should disburse the funds to the proper party and deduct a fee to compensate the county for the cost of administering the account. Be sure the funds are not exempt from this requirement (e.g., funds deposited under Property Code Section 142.008; funds generated from a case arising under the Family Code).

Local Gov't Code Sec. 117.054
Local Gov't Code Sec. 117.055

AG Op. JM-434 (1986)

If a special or separate account earns interest, the Clerk pays the interest upon withdrawal. Ninety percent of the interest is paid to the special account, and 10 percent is paid into the general fund of the county.

Local Gov't Code Sec. 117.054
AG Op. DM-282 (1994)

If registry funds do not earn interest, including funds in a special or separate account, then the Clerk deducts 5 percent or $50, whichever is less, of the amount withdrawn. This fee is deposited into the general fund of the county.

Local Gov't Code Sec. 117.055

AG Op. JC-163 (1999)

The 10 percent of earned interest or the 5 percent of funds withdrawn cannot be collected at the time of deposit but are collected only when the registry funds are withdrawn.

AG Op. DM-174 (1992)

1. Distribution of Excess Funds

Property sold for delinquent taxes may generate excess funds over and above those necessary to satisfy the judgment. Such funds are held in the registry of the court in trust for the former owner of the property.

Tax Code Art. 34.03(a)

Before the 31st day after the funds are received by the Clerk, the Clerk is required to notify the former owner of the property if the funds held are in excess of $25. The Clerk must send the notice by certified mail, return receipt requested, to the former owner of the property, at the former owner's last known address according to the records of the court or any other source reasonably available to the court The notice must:

- State the amount of the excess proceeds.
- Inform the former owner of that owner's right to claim the excess proceeds under Section 34.04.
- Include a copy of the complete text of Sections 34.03 and 34.04.

Regardless of the amount, the Clerk must keep the excess proceeds paid into court as provided by Section 34.02(c) for a period of two years after the date of the sale unless otherwise ordered by the court.

Tax Code Art. 34.04

Any party, including a taxing unit, may file a petition setting forth a claim to the excess proceeds from a tax sale. HB 1674 (82nd Legislature(amended Section 34.03(a) of the Tax Code to add the Title IV-D agency as a person or unit who may file a petition under this section.

The petition must be filed before the second anniversary of the date of the sale of the property. A copy of the petition must be served on all parties to the underlying action, as prescribed in TRCP 21a not later than the 20th day before the hearing date, as shown on the petition.

Each party that establishes a claim to the proceeds will be paid, as ordered by the court, in the following order of priority:

1. The tax sale purchaser if the tax sale has been adjudged to be void and the purchaser prevailed in an action against the taxing units under Section 34.07(d) by final judgment;
2. A taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;
3. Any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;
4. A taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale;
5. Each former owner of the property, as the interest of each may appear, provided that the former owner: (A) was a defendant in the judgment; (B) is related within the third degree by consanguinity or affinity to a

former owner that was a defendant in the judgment; or (C) acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment.

Except as provided by Subsections (c) (5) (B) and (C), a former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim to the proceeds. For purposes of this subsection, a former owner of the property is considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after the date of the judgment.

An order under this section directing that all or part of the excess proceeds be paid to a party is appealable.

A person may not take an assignment or other transfer of an owner's claim to excess proceeds unless the requirements of Tax Code, Section 34.04, Subsection (f) are met.

Interest and costs are not allowed under this section. Because the petition is filed as part of the underlying tax suit, a separate filing fee may not be charged.

If no claimant establishes entitlement to the proceeds within two years, the Clerk distributes the excess proceeds to each taxing unit that establishes its claim to the proceeds according to the priorities established in Tax Code, Section 34.04(c). The Clerk should note the date and amount distributed in both the execution docket and the ledger of the registry of the court.

Tax Code Art. 34.03(b)
Tax Code Art. 34.03(c)

2. Unclaimed/Abandoned Funds

Personal property is considered abandoned after three years if the existence and location of the owner of the property is unknown to the holder of the property, and according to the knowledge and records of the holder of the property, a claim to the property has not been exercised. Property and funds held in the registry of court are considered personal property.

Property Code Sec. 72.101

Any funds or property, except cash bail bonds, that are considered abandoned and exceed $100 in value must be turned over to the Comptroller without further order of the court. The dormancy period begins on the later of:

Local Gov't Code Sec. 117.002

AG Op. DM-348 (1995)

- The date of entry of final judgment or order of dismissal in the action in which the funds were deposited
- The 18th birthday of the minor for whom funds were deposited
- A reasonable date established by rule by the Comptroller to promote the public interest in disposing of unclaimed funds

The dormancy period must be reached as of June 30 before turning over unclaimed property. The Clerk is required to file a report with the Comptroller every year, describing the dormant funds to escheat. This report must be filed on or before November 1. Effective 1/1/2013, Sections 74.101(a) and 74.301(a) and (c) have been amended by HB 257 (82nd Legislature). The change to Section 74.101(a) will be to change the dates in this section from June 30th to March 1 and to change the November 1 date to July 1. Similar changes are made in Section 74.301(a) and (c). June 30th will change to March 1 and November 1 will change to July 1 in this section.

Prop. Code Sec. 74.101
Sec. 74.301

E. ACCOUNTING FOR AND DISBURSING REGISTRY FUNDS IN COUNTIES WITH POPULATIONS OF 190,000 OR MORE

Local Gov't Code Sec. 117.058

If the commissioners court provides a depository for registry funds in a county with a population over 190,000, the Clerk must make periodic reports to the county auditor about funds received and disbursed by the Clerk. The county auditor must establish procedures for issuing checks from the registry fund.

F. SPECIAL PROVISIONS APPLYING TO FUNDS PAID INTO COURT REGISTRY IN COUNTIES WITH POPULATION OF MORE THAN 2.4 MILLION

Local Gov't Code Sec. 117.111

Special provisions applying to funds paid into a court registry in a county with a population of more than 2.4 million can be found in Subchapter E, Chapter 117, *Depositories for Certain Trust Funds and Court Registry Funds,* Local Government Code. Many of the provisions are the same as the general rules that apply to all counties. However, for continuity and ease of reference for those Clerks affected, the entire subchapter is discussed here.

1. Money Affected

Local Gov't Code Sec. 117.112

The following list shows the kinds of money paid into the registry of any court for which the Clerk is, or may become, responsible:

- Funds of minors or incapacitated persons
- Funds tendered in connection with a bill in interpleader
- Any other funds

2. Depository Contract

Local Gov't Code Sec. 117.113

The commissioners court of the county collecting the funds may contract with one or more banks in the county for the deposit of the funds in a special account to be called the "registry fund."

3. Deposit of Funds

Local Gov't Code Sec. 117.119

Money paid into the registry of the court must be deposited by a Clerk into the registry fund at the special depository.

4. Custodianship

Local Gov't Code Sec. 117.120

A Clerk must act only in a custodial capacity regarding the registry fund, is not considered to be a trustee for the beneficial owner, and is not considered to have assumed the duties, obligations, or liabilities of a trustee for the beneficial owner.

5. Disbursement of Funds

Local Gov't Code Sec. 117.121

Money may be paid from the registry fund only on checks or drafts signed by the Clerk on the written order of the court with proper jurisdiction. An exception exists: The Clerk may make a payment without court order for unpaid court costs from a cash bond deposited in connection with an appeal after the appellate court issues its mandate in the appeal if the costs remain unpaid for 45 days after the mandate is issued.

All checks or drafts issued for the disbursement of the registry fund must be submitted to the county auditor for the auditor's countersignature before delivery or payment. The county auditor may countersign the checks only on written evidence of the order of the judge of the court authorizing the disbursement of the funds.

A disbursement under an order of a court in which registry funds have been deposited may be made by electronic transfer if all of the following occur:

- The designated recipient of the money submits a written request for the transfer to the Clerk.
- The Clerk gives written approval for the transfer.
- A county auditor countersigns the approval.

A Clerk may charge a reasonable fee, subject to the approval of the recipient of the money, for an electronic transfer of a disbursement from a registry fund.

6. Interest

Local Gov't Code Sec. 117.122

The interest derived from money on deposit in the registry fund must be paid as earned as follows:

- A sum equal to 10 percent of the interest will be paid into the general fund of the county to reimburse the county for the expenses of maintaining the registry fund.
- The remaining 90 percent of the interest will be credited to the registry fund.

For each withdrawal, a Clerk pays out the original amount deposited in the registry of the court and 90 percent of the interest earned on that amount at the time and in the manner directed by the court with proper jurisdiction.

7. Audit

Local Gov't Code Sec. 117.123

In addition to the regular auditing procedures of the county auditor, the registry funds must be audited at the end of each county fiscal year at the county's expense by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability selected by the commissioners court.

A written report of the audit will be delivered to the county judge, each county commissioner, and a Clerk within 90 days after the last day of the fiscal year. A copy of the audit must be kept at the Clerk's office and is open to inspection by any interested person during normal office hours.

8. Liability of Clerk

Local Gov't Code Sec. 117.124

A Clerk is not responsible for a loss of funds resulting from the failure or negligence of a depository or the safety of funds after deposit in a depository selected under Subchapter E, Chapter 117, Local Government Code.

However, a Clerk is responsible for a loss of funds resulting from the Clerk's official misconduct, negligence, or misappropriation of funds. Additionally, a Clerk is responsible for the safety of funds before deposit in a depository selected and authorized by the commissioners court.

9. Transfer of Money

Local Gov't Code Sec. 117.125

In the absence of a contrary order from a court having jurisdiction over the registry fund, a Clerk may transfer money deposited in the fund into a separate account. A Clerk will transfer all money deposited in a registry fund under Section 887, Texas Probate Code, into a separate account. Money transferred into a separate account under this law must be both:

- Transferred into an account authorized for investment under Chapter 2256, Government Code, by a local government or investment pool
- Invested according to the investment officer designated under Section 2256.005, Government Code, by the investing entity of which the county is a member

A transfer of money into a separate account under this section is exempt from the requirements prescribed by Section 117.121 for disbursements from registry funds. An investment of money transferred from a registry fund under this law is subject to the limitations, policies, and standards of care provided by Chapter 2256, Government Code.

CHAPTER 8

ANCILLARY PROCEEDINGS

A. INTRODUCTION

Certain instruments are issued by the Clerk after a judgment has been rendered in a civil case. Because these proceedings are subsequent to the case itself, they are called ancillary proceedings. A few of the most common ancillary proceedings are discussed in this chapter.

B. ABSTRACT OF JUDGMENT

Property Code Sec. 52.001

An abstract of judgment is a summary of pertinent facts contained in a judgment, including the amount of judgment, the date the judgment was rendered, and the identity of the parties. The abstract may be issued at any time after judgment is rendered. When recorded and indexed, the abstract of judgment constitutes a lien on the defendant's real property.

Property Code Sec. 52.0011

A recorded abstract of judgment does not constitute a lien when the defendant has appealed the judgment and has posted the proper bond. Likewise, a lien is not created when the court issues a finding against creation of a lien. Such finding must be recorded in each county where the abstract was recorded.

Property Code Sec. 52.002

An abstract of judgment may be prepared by either the Clerk or the person in whose favor the judgment is rendered, or by that person's agent or attorney. If the abstract is prepared by someone other than the Clerk, the person preparing it must also verify it.

If the Clerk prepares the abstract, the applicant for the abstract must pay the appropriate fee.

Property Code Sec. 52.003

An abstract of a judgment must show the following:

- Names of the plaintiff and defendant
- Birthdate, last three numbers of the driver's license number, and last three numbers of the social security number of the defendant, if available
- Number of the suit in which the judgment was rendered
- Defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation
- Date on which the judgment was rendered
- Amount for which the judgment was rendered and the balance due
- Amount of the balance due, if any, for child support arrearage
- Rate of interest specified in the judgment

Property Code Sec. 52.0041

Section 52.003 further states that an abstract may show the mailing address for each plaintiff or judgment creditor. However, if the judgment was abstracted after September 1, 1993, it must show the plaintiff's or judgment creditor's mailing address. If the address is not included, a penalty filing fee of $25 or twice the recording fee for the abstract, whichever is greater, must be paid.

A judgment lien continues for 10 years after the date of recording, unless it is a judgment in favor of the State, in which case the lien can continue for 20 years. It is the responsibility of the judgment creditor to renew the lien, if the judgment has not been paid. When the judgment is paid, it is likewise the responsibility of the judgment creditor to release the lien as provided in Section 52.005.

Property Code Sec. 52.006 Sec. 52.005

Special rules for discharging and canceling a judgment lien apply when the person against whom the judgment is rendered files bankruptcy. If the abstract was recorded before September 1, 1993, a court order must be issued regarding the cancellation of the judgment lien. The Clerk's only role is to perform the ministerial duties required relating to the hearing and the order.

Property Code Sec. 52.021-52.025

For abstracts recorded on or after September 1, 1993, no further action by any court is required to discharge and cancel a judgment lien. Application of these laws and any exceptions to cancellation of the judgment lien is strictly between the bankrupt debtor and the judgment creditor; the Clerk has no role in these proceedings.

Property Code Sec. 52.041-52.043

C. WRITS OF EXECUTION

A writ of execution (often termed an "execution") is a process issued by the Clerk that orders the sheriff to collect a judgment against a defendant. The sheriff either collects money or sells property belonging to the defendant for as much of the judgment as possible. The execution is returnable in 30, 60, or 90 days, as requested by the plaintiff or the plaintiff's attorney.

TRCP 622 TRCP 621

The Clerk issues the execution after the expiration of thirty days from the time the court signs the final judgment. Exceptions are:

TRCP 627

- If a supersedeas bond or notice of appeal has been filed by a party appealing the judgment and has been approved, no execution is issued.
- If a timely motion for new trial or motion in arrest of judgment is filed, the Clerk issues the execution after the expiration of thirty days from the time the order is overruled. Naturally, no execution is issued if the motion for new trial is granted, because the judgment would not be final in that case.
- If the plaintiff files an affidavit that the defendant is about to remove or dispose of property subject to execution, then execution may be issued before the thirtieth day after final judgment.

TRCP 628

An execution can be issued only if the judgment on which the execution is based is a valid final judgment. A judgment is not final unless it disposes of all the parties and the issues in a suit.

An execution cannot be issued if the party against whom a judgment has been entered has filed bankruptcy.

The procedure for issuing an execution is as follows:

- The plaintiff or his attorney submits a request for the execution.

TRCP 621

- The Clerk collects the fee and posts the request and fee in the file docket.
- From the case minutes, the Clerk enters the amount of judgment, the interest rate, and any court costs due on the execution form. From the registry of the court and the file docket, the Clerk notes any payments made on the judgment and subtracts these payments from the amount to be

TRCP 629

collected.

- The Clerk completes the execution form by filling out the case number, style of case and date of issuance.
- The execution is then recorded in the execution docket and the volume and page number of the docket record is noted on the execution.
- When the sheriff makes his return, it is recorded in the execution docket along with the amount collected.

There are several specific types of execution. The requirements set forth are in addition to those covered above.

1. Judgment for Money

TRCP 630

When the judgment requires the judgment debtor to pay a sum of money, the writ of execution must state the amount due and any interest to be paid. The writ must also require that the judgment and costs be paid out of the property of the judgment debtor subject to execution.

2. Sale of Particular Property

TRCP 631

This type of writ of execution lists specific items of the defendant's property (real or personal) to be sold to satisfy judgment. The items to be sold must be described in the writ of execution. Notice of the sale must be given in accordance with the Rules of Civil Procedure, Rules 646a through 650.

3. Delivery of Certain Property

TRCP 632

The writ of execution must describe the property to be delivered and the party to whom the judgment awards possession. The writ must also require the officer to deliver possession of the property to the party entitled to receive the property.

4. Possession of Value of Personal Property

TRCP 633

This kind of writ is issued when it is presumed the officer will not be able deliver certain property. By this writ, the officer is authorized to levy and collect the value of the judgment from any property of the judgment debtor which is liable to execution.

TRCP 634

As mentioned above, TRCP 627 states that an execution shall not issue when a supersedeas bond is filed when a case is appealed. If the supersedeas bond is filed within the time allowed by law, and an execution has already been issued, the Clerk must immediately issue a writ of supersedeas. The writ of supersedeas suspends all proceedings under the execution.

D. TURNOVER ORDERS

Civ. Prac. & Rem. Code Sec. 31.002(a)

A turnover order is a post-judgment remedy designed to aid a judgment creditor to obtain satisfaction of a judgment where the judgment debtor owns property that cannot be readily attached or levied on by ordinary legal process and is not exempt from execution for the satisfaction of liabilities. Some examples are property owned outside Texas, accounts receivable, and instruments of ownership (e.g., stock certificates, negotiable instruments, securities, etc.). These kinds of property can easily be secreted by the judgment debtor so that they cannot be found for execution by the sheriff or constable.

Generally, the turnover order remedy will be used by a judgment creditor when the traditional methods of reaching nonexempt property of a judgment debtor (i.e., writs of execution, attachment, and garnishment) have not been successful.

A judgment creditor may move for the court's assistance under the "turnover" statute in the same proceeding in which the judgment is rendered or in an independent proceeding.

Civ. Prac. & Rem. Code Sec. 31.002(d)

If the court enters a turnover order, it may do one of the following:

Civ. Prac. & Rem. Code Sec. 31.002(b)

- Order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution.

- Otherwise apply the property to the satisfaction of the judgment.

- Appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.

Civ. Prac. & Rem. Code Sec. 31.002(g)

A court may enter or enforce an order under this section that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover.

Civ. Prac. & Rem. Code Sec. 31.002(h)

Wages, before they are actually paid to the judgment debtor, cannot be subject to a turnover order. This prohibition applies to wages in any form. It also applies to the judgment debtor and any other party.

Civ. Prac. & Rem. Code Sec. 31.0025

E. WRITS OF GARNISHMENT

Garnishment is defined as money or property in the hands of a third party, belonging to a defendant, which is attached by the plaintiff. The third party holding the defendant's money or property is called the garnishee. Funds in a bank account are a very common subject of a garnishment action.

Writs of garnishment may not be issued before final judgment in a case unless the court so orders. Certain requirements, which do not apply for writs issued after final judgment, must be met for pre-judgment garnishments. General rules applying to all garnishments will be discussed first, then the specific rules for pre-judgment garnishments.

TRCP Rule 658

1. General Rules

The garnishment action must be docketed separately from the underlying action. The Clerk collects all fees charged for filing a new case. HB 627 and SB 1233 (82nd Legislature) amended Section 51.318 of the Government Code. Both bills alter the fee which may be charged for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the District Clerk's office, including certificate and seal, for each page or part of a page the fee now is "not to exceed $1." SB 1233 also amends Subsection (e) by providing that the District Clerk may not charge United States Immigration and

TRCP 659

Gov't Code Section 51.318 (b) And (e)

Customs Enforcement or United State Citizenship and Immigration Services a fee for a copy of any document on file or of record in the Clerk's office relating to an individual's criminal history, regardless of whether the document is certified. These changes became effective 6/17/11. In the garnishment action, the plaintiff is listed as the plaintiff, and the garnishee is listed as the defendant.

Gov't Code Sec. 51.318

Civ. Prac. & Rem. Code Sec. 63.002

TRCP 659
TRCP 661

The writ of garnishment is issued by the Clerk. It includes the cause number, court, and names of plaintiff(s) and defendant(s) in the original lawsuit. It states the time for the garnishee to answer. It also orders the garnishee to include in its answer what, if anything, it is indebted to the defendant for both at the time of service and on the date of the answer. The garnishee's answer must be made under oath.

TRCP 662
TRCP 663

The Clerk then delivers the writ to either the sheriff or constable, or to the plaintiff, for service on the garnishee. Most plaintiffs prefer to have the Clerk deliver the writ to the sheriff or constable, because those officers are required by statute to execute the writ immediately.

Civ. Prac. & Rem Code Sec. 63.003 Sec. 63.004

Once the garnishee has been served with the writ, the garnishee is prohibited from paying any money or releasing any property to the defendant. The exception is the payment of current wages, which are generally exempt from garnishment.

Civ. Prac. & Rem. Code Sec. 63.008

Service of a writ of garnishment on a financial institution is governed by Section 59.008 of the Finance Code.

TRCP 663a

As soon as practicable after service of the writ on the garnishee, the defendant is to be served as provided for in TRCP 21a. The defendant must be served with a copy of the writ of garnishment, the application, accompanying affidavits and any orders of the court. The defendant must also be advised of his right to replevy.

> ***NOTE:*** *There are new rules regarding the service by private process servers. See, Chapter IV, Section D for more information.*

2. Pre-Judgment Garnishments

Civ. Prac. & Rem. Code Sec. 63.001

A pre-judgment writ of garnishment is available if an original attachment has been issued or if a plaintiff has sued for a debt. In the latter case, the application for the writ must be accompanied by an affidavit stating that the debt is just, due and unpaid; that the defendant does not have property in Texas subject to execution that would be sufficient to satisfy the debt; and that the garnishment is not sought to injure the defendant or the garnishee.

TRCP 658

A pre-judgment writ can be issued only upon order of the court, after a hearing. The court in its order granting the writ must make specific findings of fact supporting the granting of the order. The order must also state the maximum value of property or indebtedness that may be garnished. The order must further state the amount of bond required from the plaintiff, and the amount of bond required of the defendant should he or she choose to replevy.

TRCP 658a

The writ of execution will not be issued until the plaintiff has filed the bond as required by the order authorizing the writ. The defendant or the plaintiff may file a motion to reduce or increase the amount of the bond, after notice to the other party. The court will issue its order on this issue only after a hearing.

3. Post-Judgment Garnishments

A writ of garnishment is available after final judgment if the plaintiff has a valid, subsisting judgment. The application for the writ is accompanied by an affidavit from the plaintiff stating that, as far as the plaintiff knows, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment. As with pre-judgment garnishments, the application must state the grounds for issuing the writ and the specific facts upon which the plaintiff is relying.

TRCP 658

Civ. Prac. & Rem. Code Sec. 63.001

The judgment must be final as to all parties before the writ will be issued. If it is not, the pre-judgment procedures and rules apply.

F. WRITS OF SEQUESTRATION

Sequestration is a remedy in equity. It is the act of taking possession of property belonging to the judgment debtor and holding it until the profits have paid the demand for which it was taken.

The plaintiff may, at any time during a suit, file an application for writ of sequestration. Note that Government Code, Section 51.318 has been amended by HB 627 and SB 1233 from the 82nd Legislature, effective 6/17/11. (*See* this Chapter, Page 5, 1. General Rules, for details regarding the amendments.) The application describes the property sued for, including the value of each article of property and the county where located. The plaintiff must also state his or her interest in the property. Affidavits of any persons having knowledge of relevant facts must be filed with the plaintiff's application.

TRCP 696
TRCP 697

Gov't Code Sec. 51.318

The court will then conduct a hearing on whether to issue the writ of sequestration. If the court does grant the application, its order will state why the court decided as it did and describe the property involved, including its value and location. A bond will be required of the plaintiff sufficient to pay all damages and costs if the plaintiff ultimately loses the suit. The order will also set out the amount of bond required of the defendant if he or she decides to replevy or take back the property. This bond is usually equal to the value of the property plus interest, if allowable, and court costs. If the property sued for was in several counties the order may allow several writs to be issued at the same time or in succession.

TRCP 696
TRCP 698

Following the hearing and the issuance of the writ, the defendant (that is, the property owner) must be served with the writ as provided in Rule of Civil Procedure 21a. The defendant must be served with the writ, a copy of the application, the accompanying affidavits, and court orders. The defendant must also be advised of the right to replevy.

TRCP 699

By definition, a writ of sequestration is a pre-judgment procedure. What ultimately happens to the property sequestered depends on the final outcome of the underlying suit. The various procedures for disposition of property following final judgment are covered in Rules of Civil Procedure 704 through 734. The Clerk has only a limited, ministerial role in these proceedings; for example, docketing the returns of bonds as described in Rule 723.

CHAPTER 9

APPEALS, EXPUNCTION AND REMOVAL

A. APPEALS OF CIVIL CASES

The courts of appeals have jurisdiction of appeals in civil cases from county and district courts in which the judgment or amount in controversy exceeds $250. A party may take a writ of error or an appeal from a final judgment to the courts of appeals.

Civ. Prac. & Rem. Code Sec. 51.012

The 14 intermediate courts of appeals in Texas have appellate jurisdiction in civil and criminal cases appealed from trial courts. Each court has jurisdiction over a geographical district, consisting of certain counties. The Clerk should determine which court of appeals has jurisdiction over the local county.

There are two appellate courts with statewide jurisdiction. The Supreme Court of Texas has statewide, final appellate jurisdiction in civil cases and original jurisdiction to issue writs. The Court of Criminal Appeals has statewide, final appellate jurisdiction in criminal cases and original appellate jurisdiction over automatic appeals in death penalty cases. Like the Supreme Court, it has the power to issue writs. Additionally, both the Supreme Court and Court of Criminal Appeals have rule-making power governing the practice and procedure in Texas courts.

The use of electronic filing is expanding in Texas. Clerks should become familiar with the rules regarding electronic filing applicable to their jurisdiction. The website for the Supreme Court of Texas now has the local rules for each county, administrative judicial region, and court of appeals. http://www.txcourts.gov/rules-forms/rules-standards.aspx The Supreme Court has also adopted its own electronic-filing rules. http://www.supreme.courts.state.tx.us/miscdocket/11/11915200.pdf

1. Appeals Procedures

The Clerk, the judge, the parties, and their attorneys all have roles in the process of perfecting an appeal. The primary responsibility for preparing the appeal, however, falls upon the Clerk. There are specific rules relating to both the time periods for perfecting appeals and the procedures for doing so. The Clerk should become thoroughly familiar with these procedures so that the appeals process is not interrupted. In determining the period within which the various steps of an appeal must be taken, the date the trial judge signs the order or judgment shall determine the beginning of the time periods prescribed for filing an appeal.

TRCP 306a

TRAP 26.1

2. Timetables for Civil Cases

a. Ordinary Appeal WITHOUT Motion for New Trial or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	*TRCP 306a*
30	File written notice of appeal	*TRAP 26.1*
60	File Clerk's record and reporter's record with court of appeals	*TRAP 35.1*

b. Ordinary Appeal WITH Motion for New Trial, Motion to

Modify Judgment, Motion to Reinstate under Rule of Civil Procedure 165a, or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	*TRCP 306a*
20	Request for Finding of Fact and Conclusion of Law	*TRCP 296*
30	Motion for new trial or to modify judgment	*TRCP 329b(a), (g)*
	(Trial court's action or inaction on motion does not affect time for appeal unless motion is granted, and then time runs from new judgment. Does not apply if judgment modified to correct clerical errors under TRCP 316)	*TRCP 329b(h)*
90	File written notice of appeal	*TRAP 26.1(a)*
120	File Clerk's record and reporter's record with court of appeals	*TRAP 35.1(a)*

c. Accelerated Appeal (Quo Warranto and Interlocutory Appeals)

Days	Event	
0	Order or judgment signed	*TRCP 306a*
20	File written notice of appeal	*TRAP 26.1(b)*
30	File Clerk's record and reporter's record with court of appeals (must be within 10 days after notice of appeal is filed)	*TRAP 35.1(b)*

d. Restricted Appeal

Days	Event	
0	Judgment signed	*TRCP 306a*
180	File written notice of appeal (6 months)	*TRAP 26.1*
194	Another party may file written notice of appeal within 14 days of first filing, or 180 days (six months), whichever is later	*TRAP 26.1(d)*
210	File Clerk's record and reporter's record with court of appeals (within 30 days of filing of first notice of appeal)	*TRAP 35.1(c)*

e. Interlocutory Appeal

Unlike the other appeals listed above, an interlocutory appeal is one that appeals an order of the court that is not a final judgment. The party filing an interlocutory appeal usually does so to prevent some court-ordered action from taking place. The effects of an interlocutory appeal on the particular court action will be discussed in more detail in section A.7, Effect of Appeal on Judgment or Court Action.

Civ. Prac. & Rem. Code Sec. 51.014(b)

On a party‘s motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Section 51.014(d), Civil Practice & Remedies Code, does not apply to an action brought under the Family Code.

Civ. Prac. & Rem. Code Sec. 51.014(d) Sec. 51.014(d-1)

3. Notice of Appeal

A written notice of appeal, filed with the trial court Clerk, is a prerequisite to an appeal in a civil case. Any party seeking to alter the trial courts judgment or an appealable order must file a notice of appeal, (although parties whose interests are aligned may file a joint notice of appeal). If a notice is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court Clerk. The appellate Clerk must immediately send the trial court Clerk a copy of the notice. The filing of a notice of appeal immediately invokes the appellate court’s jurisdiction.

TRAP 25.1

a. Contents of Notice

The notice of appeal must:

TRAP 25.1(d)

- identify the trial court and state the case's trial court number and style;
- state the date of the judgment or order appealed from;
- state that the party desires to appeal;
- 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;
- state the name of each party filing the notice;
- in an accelerated appeal, state that the appeal is accelerated; and
- in a restricted appeal:
- 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;
- state that the appellant did not timely file either a post judgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
- be verified by the appellant if the appellant does not have counsel.

b. Service of Notice

The notice of appeal must be served on all parties to the trial court's final judgment. In the case of an interlocutory appeal, the notice of appeal must be served on all parties to the trial court proceeding. A copy of the notice of appeal must be filed with the appellate court Clerk.

TRAP 25.1(e)

4. Motion for New Trial

TRCP 324

Generally, a motion for new trial is not a prerequisite to an appeal. However, one must file a motion for new trial in order to preserve certain complaints for appeal. These five specific complaints are listed in TRCP 324(b). A motion for new trial may be filed by any party.

TRCP 329b(a),(b)

A motion for new trial, if filed, shall be filed within 30 days after the judgment or other order complained of is signed. One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial is overruled and within 30 days after the judgment is signed.

TRCP 329b(c)

If the original or amended motion for new trial is not determined by written order of the court signed within 75 days after the judgment is signed, the motion for new trial shall be considered to be overruled by operation of law.

5. Request for Findings of Fact and Conclusions of Law

TRCP 296

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request must be filed within twenty days after judgment is signed with the Clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve the request on all other parties.

TRCP 297

The court must file its findings of fact and conclusions of law within twenty days after a timely request is filed. A copy of the findings and conclusions must be mailed to each party in the suit.

TRCP 297

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the Clerk a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the Clerk. Such notice must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

TRCP 298

After the court files original findings of fact and conclusions of law, any party may file with the Clerk a request for specified additional or amended findings or conclusions. The request for these findings must be made within ten days after the filing of the original findings and conclusions by the court. The court must file any additional or amended findings and conclusions within ten days after such request is filed. No findings or conclusions are to be deemed or presumed by any failure of the court to make any additional findings or conclusions.

6. Restricted Appeal

TRAP 30

A party who did not participate, either in person or through counsel, in the hearing that resulted in the judgment complained of and who did not timely file a post judgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the 90 days provided by Rule 26.1(a), may file a notice of appeal within six months after the judgment or order is signed as provided by Rule 26.1(c).

Restricted appeals replace “writ of error” appeals to the court of appeals. Statutes pertaining to writ of error appeals apply equally to restricted appeals.

7. Effect of Appeal on Judgment or Court Action

TRAP 24.1

The appellant may supersede (*i.e.*, suspend a judgment creditor's right to enforce) a judgment pending appeal by doing any one of the following:

- filing with the Clerk a written agreement with the judgment creditor for suspending enforcement;
- filing with the Clerk a good and sufficient bond (called a supersedeas bond);
- making a deposit with the Clerk in lieu of a bond;
- providing alternate security ordered by the court.

TRAP 24.1(b)(2)
TRAP 24.1(c)(3)

The Clerk must review and approve all bonds, ensuring they meet the requirements set forth in TRAP 24.2. If cash is deposited in lieu of a bond, the Clerk follows the appropriate procedures for depositing the funds into the registry of court.

TRAP 24.1(f)

Enforcement of a judgment must be suspended when the judgment has been superseded. If any enforcement actions have begun, they must cease when the judgment is superseded. If execution has been issued, the Clerk will promptly issue a writ of supersedeas when the judgment is superseded.

Civ. Prac. & Rem. Code Sec. 51.014(b)
Civ. Prac. & Rem. Code Sec. 51.014(a)(4)

An interlocutory appeal stays the commencement of a trial pending resolution of the appeal. An exception to this stay is an appeal of an order granting or refusing a temporary injunction or granting or overruling a motion to dissolve a temporary injunction. An interlocutory appeal of an order certifying or refusing to certify a class, of a denial of a motion for summary judgment based on immunity asserted by a government employee or officer, or of an order granting or denying a plea to the jurisdiction by a governmental agency also stays all other proceedings in the trial court pending resolution of that appeal.

Civ. Prac. & Rem. Code Sec. 51.014(c)

An interlocutory appeal of an order denying certain motions for summary judgment, granting or denying a special appearance and granting or denying a plea to the jurisdiction by a governmental unit is not subject to the stay UNLESS the appellant files the appeal by certain times set out in Section 51.014(c) of the Civil Practice and Remedies Code.

Civ. Prac. & Rem. Code Sec. 51.014(e)

An appeal under Civil Practices and Remedies Code Section 51.014(d) (see, Section A2e, this chapter) does not stay proceedings in the trial court unless the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal.

8. Filing the Record

TRAP 34.1
TRAP 35.3

The Clerk's record (formerly known as the "transcript" and the reporter's record (formerly known as the "statement of facts") comprise the record on appeal. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

The party filing the appeal must file the following documents with the District Clerk:

- Notice of appeal;
- Affidavit of indigence, if applicable; and
- A written designation specifying items to be included in the Clerk's record.

TRAP 9.2(a)(1)
TRAP 25.1(a)
TRAP 20.1(c)(1)
TRAP 34.5(b)(1)

When the notice of appeal is accompanied by an affidavit of indigence, the Clerk must send a copy to the court reporter. If the appellant has established his or her indigence, then the Clerk and the reporter must prepare the record on appeal without prepayment.

TRCP 20.1(d)(1)
TRCP 20.1(j)

a. The Clerk's Record

An order of the Supreme Court, adopted pursuant to Texas Rule of Appellate Procedure 34.4, sets out the form of the Clerk's record in civil cases. The order, entitled "Order Directing the Form of the Appellate Record in Civil Cases" is set out in the appendix to the Rules of Appellate Procedure. A copy of the order is included in this manual as form IX-1.

TRAP 34.4

The parties may, by written stipulation filed with the trial court, agree on the contents of the record on appeal. Unless the parties have so designated the contents of the Clerk's record pursuant to TRAP 34.2, the Clerk's record must include copies of the following:

TRAP 34.2
TRAP 34.5(a)

- all pleadings on which the trial was held;
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;
- any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under Rule 34.6(c);
- any request for preparation of the Clerk's record;
- a certified bill of costs including the cost of preparing the Clerk's record, showing credits for payments made;
- any filing that a party designates to have included in the record.

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee.

TRAP 35.3(a)

c. The Reporter's Record

Unlike the Clerk's record, the reporter's record is not always required in order to file an appeal, but may be in some cases. However, it is common practice to file both records in order to have as complete a record as possible before the court of appeals. *TRAP 34.1*

The appellant must make a request in writing to the official court reporter to prepare the reporter's record. The request must designate the exhibits to be included, and which portion of the proceedings are to be included. Also, the appellant must file a copy of the request with the trial court Clerk. *TRAP 34.6(b)*

If the court proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of the proceedings and any exhibits, as designated. If the proceedings were electronically recorded, then the reporter's record consists of certified copies of the tapes, the exhibits designated, and certified copies of the logs prepared by the court reporter under TRAP 13.2. *TRAP 34.6(a)*

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals to the Clerk after copying them for inclusion in the record. *TRAP 34.6(g)(1)*

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits. *TRAP 34.6(g)(2)*

d. The Reporter's Responsibility

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if: *TRAP 35.3*

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

9. Mandate Received

When a mandate is returned on the appeal, it is recorded as part of the case minutes in the lower court. If the judgment is affirmed, the appellant pays the costs of appeal and the judgment may be executed. If the judgment is reversed, the appellee pays the costs of appeal and the judgment is set aside. *TRAP 18.1* *TRAP 43.4*

B. APPEALS OF CRIMINAL CASES

1. Jurisdiction

The jurisdiction for appeals of all criminal cases from the district or county court is with the court of appeals within the particular district, except in those cases in which the death penalty has been assessed. Jurisdiction of cases in which the death penalty has been assessed is with the Court of Criminal Appeals. It is the *CCP Art. 4.03* *CCP Art. 4.04*

responsibility of the Clerk in all appeals to prepare the Clerk's record and forward it to the court of appeals or the Court of Criminal Appeals.

2. Right to Appeal

CCP Art .44.02 TRAP 25.2(a)(2)

A defendant in any criminal action has the right to appeal; however, this right is restricted in plea bargain cases. When the defendant pleads guilty or nolo contendere, and the punishment does not exceed that recommended by the prosecutor, the defendant may appeal only: (1) those matters that were raised by written motion filed and ruled on before the trial; or (2) after getting the trial court's permission to appeal. The trial court must enter a certification of the defendant's right to appeal in every case in which it enters a judgment of guilt or other appealable order.

CCP Art. 44.01

The State may appeal a court's order in circumstances set forth in Code of Criminal Procedure Article 44.01.

3. Perfecting Appeal in Criminal Cases

TRAP 25.2(b)

Appeal is perfected by timely filing a sufficient notice of appeal. Because death penalty cases are automatically appealed to the Court of Criminal Appeals, no notice of appeal is required.

a. Notice of Appeal

TRAP 25.2(c)

Notice must be given in writing and filed with the trial court Clerk. Notice is sufficient if it shows the party's desire to appeal from the judgment or other appealable order, and, if the State is the appellant, the notice complies with Code of Criminal Procedure article 44.01.

CCP Art. 44.01

b. Clerk's Responsibilities

TRAP 25.2(e)

The trial court Clerk must note the case number and the date when the notice was filed on the copies of the notice of appeal. The Clerk must also immediately send one copy to the Clerk of the appropriate court and, if the appeal was filed by the defendant, one copy to the State's attorney.

c. Effect of Appeal

TRAP 25.2(g)

Once the record has been filed in the appellate court, all further proceedings in the trial court, except as provided otherwise by law or by these rules, will be suspended until the trial court receives the appellate-court mandate.

4. The Appellate Record

TRAP 34.1 TRAP 35.3

The two primary components of the record on appeal are the Clerk's record and the reporter's record. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

TRAP 20.2

An appellant who is unable to pay for the appellate record may, within the time required to perfect an appeal, file a motion and affidavit asking the court to have the appellate record furnished without charge. If, after hearing the motion, the court finds that the appellant cannot pay or give security for the appellate record, the court must order the reporter to transcribe the proceedings. The reporter is to be paid for

transcribing the proceedings from the general fund of the county in the amount set by the trial court.

a. The Clerk's Record

The format and the contents of the Clerk's record are critical. The form of the Clerk's record in criminal cases is prescribed by the Court of Criminal Appeals in its "Order Directing the Form of the Appellate Record in Criminal Cases" set out in the appendix to the Texas Rules of Appellate Procedure. A copy of the order is included in this manual as form IX-2.

The parties may agree to the contents of the Clerk's record by filing a written stipulation with the trial court. If they have not so agreed, the Clerk's record must include copies of the following: *TRAP 34.2*

- the indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea or guilty or nolo contendere has been entered, any documents executed for the plea; *TRAP 34.5(a)*
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;
- any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under Rule 34.6(c);
- any request for preparation of the Clerk's record;
- the trial court's certification of the defendant's right of appeal under Rule 25.2; and
- any filing that a party designates to have included in the record.

If a relevant item has been omitted from the Clerk's record, the trial court Clerk prepares, certifies and files a supplement containing the omitted item with the appellate court. The direction to do so may come from the trial court, the appellate court, or any party to the case. *TRAP 34.5(b)*

The appellate court may direct the trial court to prepare and file findings of fact and conclusions of law, or may direct the trial court to prepare a certification of the defendant's right to appeal. The Clerk must then prepare, certify and file in the appellate court such findings and conclusions or certificate as a supplemental record. *TRAP 34.5(c)*

Any supplemental Clerk's record becomes part of the appellate record.

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing *TRAP 35.3(a)*

the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee.

c. The Reporter's Record

TRAP 34.1

Unlike the Clerk's record, the reporter's record is not required in order to file an appeal. (The reporter's record is required when it is "necessary to the appeal.") However, it is common practice to file both the Clerk's record and the reporter's record to have as complete a record as possible before the court of appeals.

TRAP 34.6(b)

The appellant must make a request in writing to the official reporter to prepare the reporter's record. The request must designate the exhibits to be included, and which portion of the proceedings are to be included. Also, the appellant must file a copy of the request with the trial court Clerk.

TRAP 34.6(a)

If the court proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of the proceedings and any exhibits, as designated. If the proceedings were electronically recorded, then the reporter's record consists of certified copies of the tapes, the exhibits designated, and certified copies of the logs prepared by the court reporter under TRAP 13.2.

TRAP 34.6(g)(1)

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals to the Clerk after copying them for inclusion in the record.

TRAP 34.6(g)(2)

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits.

d. The Reporter's Responsibility

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if:

TRAP 35.3(b)

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

5. Criminal Appellate Process and Timelines

The Clerk's responsibility in appeals is not only to prepare the Clerk's record but to coordinate the efforts of the attorneys, the judge, and the court reporter. Therefore, the Clerk must be aware of the entire appellate process.

TRAP 4.1

In criminal appellate matters, the beginning of the periods of time prescribed in the various rules, statutes, and orders of court is determined by the date sentence is imposed or suspended in open court. In computing any such period of time, the date of sentencing 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.

TRAP 21.2
TRAP 21.4
TRAP 21.8

A motion for new trial is not a requisite to presenting a point of error on appeal, except when it is necessary to prove facts not in the record. However, if a motion for new trial is filed, it may be filed prior to, or shall be filed within 30 days after, the date sentence is imposed or suspended in open court. Amended motions may be filed before any preceding motion for new trial is overruled and within 30 days after sentence. In the event an original or amended motion for new trial is not granted or denied by written order of the court within 75 days after the date of sentence, it shall be considered overruled by operation of law.

TRAP 22.1-22.6

A motion in arrest of judgment is the defendant's oral or written suggestion that judgment rendered against him is contrary to law. A motion in arrest of judgment may also be filed within 30 days of sentence and will be overruled by operation of law if not ruled on by oral or written order within 75 days of sentencing. An order overruling a motion in arrest of judgment shall be considered as an order overruling a motion for new trial for the purpose of giving notice of appeal.

TRAP 25.2
TRAP 26.2

A certification of the defendant's right of appeal must be entered by the trial court in every case in which a judgment of guilt or other appealable order is entered. Notice of appeal shall be given in writing and filed with the Clerk of the trial court. Appeal is perfected when notice of appeal is filed within 30 (15 by the State) days after the day sentence is imposed or suspended in open court or the day an appealable order is signed by the trial judge; except, if a motion for new trial has been timely filed, notice of appeal shall be filed within 90 days after the day sentence is imposed or suspended in open court. The Clerk shall note upon the copies of the notice the number of the cause and the date that notice was filed and shall immediately send one copy to the Clerk of the appropriate court of appeals and one copy to the attorney for the state.

TRAP 42.2(a)

A notice of appeal may be withdrawn at any time prior to the decision of the court of appeals. The withdrawal shall be in writing, signed by the party that filed the appeal and filed in duplicate with the Clerk of the court of appeals who will immediately forward the duplicate copy to the Clerk of the trial court.

TRAP 42.2(b)

An appeal may not be withdrawn after the appellate court has rendered its opinion unless all parties agree and the court approves the withdrawal. If the withdrawing party obtains the required consent and approval, the appellate opinion is withdrawn and the appeal dismissed. The appellate Clerk must send notice of the withdrawal to the trial court Clerk.

TRAP 33.2

To complain on appeal about matters that would not otherwise appear in the record, a party must file a formal bill of exception. Formal bills of exception shall be filed in the trial court within 60 days after the sentence is pronounced or suspended in open court, or if a timely motion for new trial has been filed, formal bills of exception shall be filed within 90 days after the sentence is pronounced or suspended in open court. When formal bills of exception are filed, they should be included in the Clerk's record or in a supplemental Clerk's record.

CCP
Art. 44.42
CCP
Art. 44.43

A defendant may have the final judgment forfeiting a personal bond, bail bond, or peace bond where the judgment is for $20.00 or more, exclusive of costs, reviewed upon writ of error. If the defendant chooses to appeal on a writ of error, the Clerk notifies the judge and the prosecution, and executes the appeals procedure in the normal manner.

When a mandate is returned on the appeal, the Clerk shall file it with the papers of the case and note it upon the docket. The Clerk must also send an acknowledgment of the mandates receipt to the appellate Clerk.

TRAP 18.4
TRAP 51.2

Upon receipt of the mandate affirming the judgment where the defendant in the case is not in jail, the Clerk shall issue a capias for the arrest of the defendant for the execution of the sentence of the court. The capias (commitment) shall include a recitation of the conviction, which sets forth the offense and judgment and sentence of the court, the appeal and affirmation of the judgment and the filing of the capias. The capias commands the sheriff to arrest the defendant. The sheriff shall notify the Clerk when the mandate has been carried out.

TRAP 51.2

The appellate court may reverse the trial court's judgment and order a new trial, or reverse and order the case dismissed, or reverse and order the defendant's acquittal. The Clerk has no specific prescribed duties when trial court judgments are reversed, beyond the ordinary duties of updating the case file and docket.

C. BILL OF REVIEW

A bill of review is an equitable proceeding to set aside a judgment that is no longer appealable or subject to a motion for new trial. A bill of review is a separate suit and should be given a new docket number. Since the original judgment has become final, the action in which it was entered has passed out of the jurisdiction of the court, and accordingly an order purporting to consolidate the bill of review suit with the original action is of no effect.

However, a bill of review will not be dismissed, *assuming its allegations are otherwise sufficient*, if it is given the number of the action in which the judgment was rendered and is mistakenly called a motion for new trial, or given some other improper label. One court of appeals has held that in "such a situation the trial court should transfer it to an independent position on the docket."

4 McDonald's Tx.Civ. Prac. '18.24

The remedy afforded by a bill of review is ordinarily available to any party to the action. However, it can also be available to one who has a then-existing interest or right that was prejudiced by the judgment.

Postell v. Tx Dept of Public Welfare, 549 S.W. 2d 425 (Tx. Civ. App - Ft.Worth, 1977, writ ref'd n.r.e)

The grounds for granting a petition for review are narrow and restrictive. An appearance that an injustice has been done is not sufficient grounds to grant the petition for review.

$27920.00 in U.S. Currency v. State of Texas 37 S.W.3d 533, (Tex. Civ. App – Texarkana 2001 , pet. denied)

In filing a bill of review, the petitioner must allege and prove a meritorious defense to the cause of action alleged to support the judgment. The petitioner must also prove that he was prevented from making that defense due to the fraud or wrongful act of the opposing party, and that the failure was not the result of his own fault of negligence. If the petitioner can show he was never served with notice of the underlying suit, he need not allege and prove a meritorious defense.

A petition for a bill of review must comply with the four year statute of limitations, unless the petitioner can show extrinsic fraud. A long delay in filing a bill of review must be explained, and it must be clear that the delay was not because of a lack of diligence on the petitioner's part.

Williams v. Adams, 696 S.W. 2d 156 (Tex. App. - Houston [14th Dist] 1985, writ ref'd n.r.e.)

Solomon, Lambert, Roth & Assoc., Inc. and Reed v. Kidd, 904 S.W.2d 896 (Tex App – Houston [1st Dist] 1995, no writ)

A bill of review must be filed in the same court that entered the judgment. As in other civil actions, service on the adverse party is required. The Clerk must collect all appropriate filing fees.

Civ. Prac. & Rem. Code Sec. 16.051

Williams v. Adams, supra

Solomon, et al. v. Kidd, supra

Fassy v. Kenyon, 675 S.W. 2d 217 (Tex. App. - Houston [1st Dist.] 1984 (orig. proceeding)

D. EXPUNCTION OF CRIMINAL RECORDS

1. Right to Expunction

- A person who has been arrested is entitled to have all records related to the arrest expunged under certain circumstances. Upon being released or discharged, the arrested person must be provided with written notice of this right and with a copy of Chapter 55 of the Government Code.

CCP Article 55.01

- A close relative (grandparent, parent, spouse, or adult brother, sister, or child) of a deceased person now has the right to seek expunction of arrest records and files on behalf of the deceased person, if the deceased person would have been entitled to expunction of records and files.

Article 55.011

- A close relative of a deceased person (grandparent, parent, spouse, or adult brother, sister, or child) now has the right to seek expunction of arrest records and files on behalf of the deceased person, if the deceased person would have been entitled to expunction of records and files.

Generally, a person is entitled to expunction if the person was tried and acquitted; tried, convicted, and subsequently pardoned; or tried, convicted, and acquitted by the Court of Criminal Appeals. HB 351 and SB 462 from the 82nd Legislature have expanded the circumstances under which a person may be entitled to expunction. This is another example of two bills which each amended Article 55.01, Code of Criminal Procedure, are both effective as of 9/1/2011, but have very slight differences.

CCP Art. 55.01(a)

Upon the release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights regarding expunction and a copy of the provisions of Article 55, Code of Criminal Procedure.

CCP Art. 55.05

A person is also entitled to have personal identifying information in another person's arrest record expunged if the identifying information was given falsely by the person arrested, and the only reason for the identifying information being in the record is that it was falsely given by the arrested party.

CCP Art. 55.01(d)

2. Exceptions to Expunction

Records may not be expunged after acquittal, whether by trial court or the Court of Criminal Appeals, if the offense for which a person was acquitted arose out of a criminal episode, as defined by Penal Code Section 3.01, and the person was convicted of or remains subject to prosecution for at least one other offense committed during the criminal episode.

CCP Article 55.01(c)

Records relating to the suspension or revocation of a driver's license, permit or privilege to operate a motor vehicle may not be expunged, except as provided for in Sections 524.015 or 724.048 of the Transportation Code.

CCP Art. 55.06)

Notwithstanding any other provision of this article, a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Section 21, Article 42.12, Code of Criminal Procedure.

CCP Art. 55.01(a-1)

Also, notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released under Chapter 17 following an arrest is not eligible under Subsection (a)(2)(a)(i)(a), (b), or (c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.

CCP Art. 55.01(a-2)

3. Procedure for Expunction

a. Expunction Due to Acquittal by Trial Court

If the person is acquitted by the trial court (Article 55.01(a) (1) (A)), the trial court is required to notify the person of the right to expunction. In such a case, the person makes a request for expunction to the trial court, or a district court in the county in which the trial court is located if the trial court is not a district court, and gives notice to the State . Within 30 days of acquittal, the district court must enter an order of expunction. The defendant will provide to the district court all information required in a petition for expunction.

CCP Art. 55.02, Sec. 1

b. Expunction Due to Pardon, Acquittal by Court of Appeals, or Other Detailed Circumstances

If the defendant is convicted and subsequently granted relief or pardoned on the basis of actual innocence of the offense, the trial court (if it is a district court) or a district court in the county in which the trial court is located shall enter an order of expunction under Article 55.01(a)(1)(B)(ii) no later than the 30th day after the date the court receives notice of the pardon or other grant of relief. The person shall provide the district court all of the information required in a petition for expunction under Section 2(b). The attorney for the state shall prepare an expunction order for the court's signature and notify the Texas Department of Criminal Justice if the person is in the custody of the department. HB 351 created Section 1a, which has Subsections (a)-(d). New Subsection (d) requires that the court retain all documents sent to the court under Subsection (c)(1) until the statute of limitations has run for any civil case or proceeding relating to the wrongful imprisonment of the person subject to the expunction order.

HB 351 (82nd Leg.)

CCP Art. 55.02, Sec. 1a

A person who is entitled to expunction under Articles 55.01(a)(1)(B), 55.01(a)(2) or 55.01(b) may file an ex parte petition for expunction in a district court in the county in which he was arrested or the county where the offense allegedly occurred. The petition must contain all the information set forth in Article 55.02,

CCP Art. 55.02, Sec. 2

Section 2(a) and (b).

CCP Art. 55.02, Sec. 2(c)

The court shall set a hearing on the petition for expunction no sooner than 30 days from the filing of the petition. The court shall give reasonable notice of the hearing to each official, agency, or other entity named in the petition by certified mail, return receipt requested. Notice may be given by secure electronic mail or by facsimile. Each entity may be represented by the attorney responsible for providing legal representation to the entity in other matters. If the court finds the petitioner is entitled to expunction of the files and records, it shall enter an order directing expunction.

CCP Art. 55.02 Sec. 2(c-1)

CCP Art. 55.02 Sec. 2(d)

CCP Art. 55.02, Sec. 2(e)

The Director of Public Safety or his authorized representative may file an ex parte petition for expunction on behalf of a person who is entitled to expunction under Article 55.01(a), (b), and (d). The petition is to be filed in a district court for the county in which the person was arrested or the offense was alleged to have occurred.

CCP Art. 55.02, Sec. 2(f)

An ex parte petition described above must be verified, and must contain all the information set forth in Article 55.02, Sec. 2(f). If any the required information is not available, then the petition must contain an explanation for why the omitted information is not included.

c. Expunction Due to Provision of False Identifying Information by Arrestee

HB 1573 (82nd Leg.)

CCP Art. 55.02, Sec. 2a

A person who is entitled to the expunction of personal identifying information contained in another person's arrest record under Article 55.01(d), may file an application for expunction with the prosecuting attorney for felonies in the county in which the person resides. The application must be verified, and must include identifying information about the applicant and the arrest in which the applicant was named as set forth in Article 55.02(2a)(b). The petition must also include the applicable physical or e-mail addresses of the agencies and entities that petitioner has reason to believe have information related to records or files that are subject to expunction.

The prosecuting attorney verifies the information contained in the application. He or she forwards a copy of the application to the district court, with a list of agencies and entities likely to have records or files subject to expunction. The prosecuting attorney requests the district court to enter an order of expunction. Upon receipt of the request, the district court enters a final order directing expunction. No hearing is held.

4. Order Directing Expunction

CCP Art. 55.02, Sec. 3(a)

The order shall require any state agency, that sent information concerning the arrest of the person entitled to expunction to a central federal depository, to request that the depository return all records and files subject to the order of expunction.

CCP Art. 55.02, Sec. 3(b)

The order of expunction must have a copy of the judgment of acquittal attached, if expunction is requested under Article 55.01(a) (1) (A) or Article 55.01(b). All orders of expunction are to contain the following information:

- Personal information on the person who is the subject of the expunction order (full name, sex, race, date of birth, driver's license number and social security number);
- The offense charged;

- The date the person was arrested;
- The case number and court of offense; and
- The tracking incident number (TRN) assigned to the individual incident of arrest under Article 60.07(b) (1) by the Department of Public Safety.

When the order of expunction is final, the Clerk of the court must send a certified copy of the order to the Crime Record Service of the Department of Public Safety and to each state agency designated in the petition for expunction. If requested in writing by the person who is subject to the order, the Clerk must send the certified copy of the order by secure electronic mail or by facsimile. Otherwise, the certified copies of the order must be sent by certified mail, return receipt requested. The Clerk may elect to substitute hand-delivery for certified mail, but must obtain a receipt for that hand-delivered order.

CCP Art. 55.02, Sec. 3(c), (c-1)

The Department of Public Safety must notify any central federal depository of criminal records, by any method (including electronic mail or facsimile), of the order. The notification must be accompanied by an explanation of the effect of the order and a request that all records be destroyed or returned to the court, or a request for compliance with the provisions of Section 5(f) relating to expunction under Article 55.01(d).

CCP Art. 55.02,Sec. 3(d)

Any returned receipts received by the Clerk from notices of the hearing and copies of the order must be maintained in the file on the proceeding by the Clerk.

CCP Art. 55.02, Sec. 4(a)

The court order may allow a law enforcement agency and the prosecuting attorney to retain the records of a person subject to an expunction order if the person is still subject to conviction for another offense under the same criminal offense because the statute of limitations has not run, and there is reasonable cause to believe the person will be prosecuted.

If the expunction is ordered on the basis of an acquittal, the court order may permit retention of records if:

- The records and files are necessary to investigate and prosecute a person other than the person who is the subject of the expunction order.
- The records and files are necessary for use in another criminal case, or in a civil case, including a civil suit or suit for possession of or access to a child.
- The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)9a), (b), or (c), but without the certification of the prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(d).

*HB 351 (*2nd Leg.)*

Upon receipt of the expunction order, unless the order states that records may be retained as discussed above, each official, agency or other entity named in the expunction order must return all records and files subject to the expunction order to the court; or, in cases other than those described by Section 1a, if return of the records and files is not practical, then all portions of the record or files that identify the person must be obliterated, and the entity must notify the court of its action.

Each agency, official or other entity must also delete from its public records all references to the files and records that are subject to the expunction order.

Upon receipt of an order of expunction based on Article 55.01(d), each official, agency or other entity shall obliterate all portions of the record that identify the petitioner, and substitute any available information that identifies the person arrested. The files and records with the substituted information may not be returned or deleted from the index references.

CCP Art. 55.02, Sec.5(a)

Generally, the records and files of expunction proceedings are not public record and may not be inspected by anyone other than the person who is the subject of the order.

CCP Art. 55.02, Sec. 5(f)

The exceptions to this rule are:

- if records have been retained under the order of expunction, and the person is again arrested for or charged with an offense arising out of the transaction for which the person was arrested.

CCP Art. 55.02, Sec. 5(c)

- the basis for expunction was an entitlement under Article 55.01(d)

The Clerk of the court issuing the order of expunction shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.

CCP Art. 55.02, Sec. 5(b), (d),(d-1),(e)

The records and files may be returned to the person who is the subject of the expunction order, unless the basis of the expunction order was an acquittal, or based on an entitlement under Article 55.01(d). The Clerk shall destroy all records of the proceeding not earlier than the 60th day or later than the first anniversary date of the expunction order, unless the basis of the expunction order was an acquittal or an entitlement under Article 55.01(d). Once the files are destroyed, the Clerk must certify their destruction to the court.

No later than the 30th day before the date on which files will be destroyed, the Clerk must notify the attorney representing the state of the expunction proceeding. Notice may be given by mail, electronic mail, or facsimile. If the attorney objects within 20 days of receiving the notice, the Clerk may not destroy files until the first anniversary date of the expunction order.

5. Appeal of Order of Expunction

The person who is the subject of an expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

CCP Art. 55.02, Sec. 3(a)

6. Effect of Order of Expunction

When the order of expunction is final, the release, dissemination or use of the expunged records and files for any purpose is prohibited. The person arrested may deny the occurrence of the arrest and the existence of the expunction order. When questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, it may only be stated that the matter in question has been expunged.

CCP Art. 55.03

Violation of the expunction order, by knowingly releasing information from expunged records or failing to return or obliterate identifying information from the records, is a Class B misdemeanor.

CCP Art. 55.04

7. Fees

The normal filing fee for a civil action in district court is assessed if an ex parte petition is filed as part of the proceeding. Each notice of hearing sent by certified mail is $1.00 plus postage. Each certified mailing of a certified copy of the order of expunction is $2.00 plus postage.

E. REMOVAL OF CASE FROM STATE TO FEDERAL COURT

A notice of removal must be filed in the appropriate district court of the United States within 30 days of notification to the defendant of the action pending in a civil suit. Similarly, the notice must be filed within 30 days after arraignment or up to any time before trial, whichever is earlier, in a criminal action. The U.S. District Court may grant an extension of time in criminal cases.

28 USCA Sec. 1446
28 USCA Sec. 1447

A copy of the notice of removal is generally filed in the state court, as well as the U.S. District Court, by the removing party. The removing party is required to give notice of removal to adverse parties and file a copy of the notice of removal with the state court Clerk. If removal is permitted, the U.S. District Court Clerk notifies the state court in which the case was pending. The Clerk files the notice with the other papers in the case.

28 USCA Sec. 1446(d)
28 USCA Sec. 1446(c)(5)

For civil suits, all action is halted on the proceedings unless and until the case is remanded back to the state court. In criminal actions, the state may continue with the proceedings, except that a judgment of conviction shall not be entered unless the case is remanded. If the defendant(s) is in custody or process has been served by the state court, the U.S. District Court shall issue a writ of habeas corpus after which the marshal shall take the defendant(s) into custody and deliver a copy of the writ to the Clerk of the state court.

The district court of the United States may request copies of all records and proceedings filed in the state court. The request may be made to the removing party to provide such copies to the U.S. District Court, or it may issue a writ of certiorari to the state court to provide the copies.

An order remanding a case back to the state court from which it was removed is not reviewable on appeal or otherwise unless it was removed pursuant to United States Code Annotated Title 28 §1443 (civil rights cases). The case may be remanded upon receipt by the U.S. District Court (called summary remand), upon the motion of a party, or at any time during the course of the case when it appears the U.S. court lacks subject matter jurisdiction.

28 USCA Sec. 11447(c)

TRCP 237a

If the case is remanded, a certified copy of the order of remand shall be mailed to the Clerk of the state court. In civil cases, the plaintiff is required to file a certified copy of the order of remand with the state court Clerk, and is also required to give written notice to the adverse parties. Upon receipt of the order of remand, the state court may then proceed with the case.

CHAPTER 10

FAMILY LAW AND PARENT-CHILD RELATIONSHIP CASES

Introduction

Family Code Chapter 201

Family law matters are generally heard in the district courts. In some counties, the county courts at law are authorized by statute to hear family law matters. In addition, some family law matters are heard by child protection court associate judges and by child support court associate judges, formerly known as court masters. (Child support courts are sometimes called Title IV-D Courts; this refers to the section of the United States Code which authorizes the program. U.S.C. Title 42, Chapter 7, Subchapter IV, Part D.)

The Office of Court Administration has been allocated funds and administers nineteen specialized child protection courts, formerly known as foster care courts or cluster courts. These courts are staffed by visiting or associate judges who travel from county to county hearing only child abuse and neglect cases, which are assigned by the district and county courts. The 19 courts cover 115 counties primarily in predominantly rural areas. Child protection court associate judges are appointed by the presiding judge of an administrative judicial region; there are nine administrative judicial regions in Texas. Child protection court associate judges and support staff are employees of the Office of Court Administration

Child support (also known as Title IV-D) associate judge positions were created by the Texas Legislature in 1986 in response to a federal requirement that states create expedited processes to resolve child support cases. These associate judges are actually state employees and are part of the Office of Court Administration. The program is funded by a combination of state and federal sources. Child support associate judges are appointed by the presiding judge of an administrative judicial region. As of January 1, 2014, the Office of Court Administration IV-D associate judges serve in 43 courts and cover 221 counties.

Child support associate judges hear child support cases prosecuted by the Office of the Attorney General, which is Texas' designated Title IV-D agency. Child support associate judges may also hear cases to establish paternity, as well as cases to establish and enforce support orders. Individuals who receive Temporary Assistance for Needy Families (TANF) and/or Medicaid, and those who apply for TANF and/or Medicaid who have minor children, are automatically assigned as Title IV-D cases. Any person who requires child support collection assistance may apply to the Attorney General for services.

Family Code Sec. 102.014

> *NOTE: In 2013, Senate Bill 1422 from the 83rd Legislature amended Section 102 by adding Section 102.014 Use of Digitized Signature. A digitized signature on an original petition under this chapter or any other pleading or order in a suit satisfies the requirements for and imposes the duties of signatories to pleadings, motions, and other papers identified under Rule 13, Texas Rules of Civil Procedure. A digitized signature under this section may be applied only by, and must remain under the sole control of, the person whose signature is represented.*

A. DISSOLUTION OF MARRIAGE

1. Filing and Fees

Pleadings in a suit for dissolution of marriage are styled "In the Matter of the Marriage of _____ and _____." If the petition relies on statutory language to state the grounds for dissolution, underlying facts need not be specified. The requirement for a statement regarding alternative dispute resolution to appear on the initial pleading has been repealed (former Family Code Section 6.404). *Family Code Sec. 6.401 Sec. 6.402*

In addition, at the time the petition is filed, the petitioner must file a completed report that may be used by the District Clerk in complying with Health and Safety Code Section 194.002 (see Section A4, below). *Family Code Sec. 6.410*

The fees charged by the Clerk for the filing and processing of a family law case or a suit affecting the parent-child relationship are slightly lower than the fees charged in other civil cases. (*See* Chapter III, Section E7.)

2. Indigent Petitioners

In lieu of paying filing fees, a petitioner may file an affidavit of indigency. When the affidavit is filed, the Clerk must docket the action, issue citation and provide the other normal services the Clerk provides when a party pays the filing fee. *TRCP 145*

The affidavit must contain certain financial information as detailed in Rule 145. The affidavit must also contain the following statement:

> "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct."

Generally, a petitioner's affidavit of indigency may be contested by the defendant or by the Clerk. The affidavit may be contested by means of a written contest that gives notice to all parties. A party's affidavit of inability that attests to receipt of government entitlement based on indigency may be contested only with respect to the veracity of the attestation. Please note that a Clerk's decision to contest an affidavit would occur after the case has been filed. The Clerk may not refuse to allow a case to be filed or refuse to docket a case just because the Clerk plans to contest the affidavit. The Clerk must treat the case in the same manner as the Clerk would treat a case in which filing fees have been paid. At the first regular (not temporary) hearing in the case, the court should consider the contest. If the court finds that the petitioner can afford costs, the petitioner must pay the normal filing fees in order for the case to continue to be handled by the Clerk and the court. As noted in Rule 145, "except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made."

There is an exception to the general rule that an affidavit of indigency may be contested. If the petitioner is represented by an attorney who is providing free legal services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) Program, the attorney may file an IOLTA certificate confirming that the IOLTA-funded program screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of indigency accompanied by an attorney's IOLTA certificate may not be contested.

3. Citation

Citation in a suit for divorce or annulment may be by publication as in other civil *Family Code Sec. 6.409(a)*

cases, except that notice is published **one** time only. *TRCP 109*

The citation, whether for personal service or by publication, must contain the following quotes:

Family Code Sec. 6.409(b)

> "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the _____Court of County, Texas, on the _____ day of _____, against Respondent(s), numbered _____, and entitled "In the Matter of Marriage of _____ and _____." The suit requests (statement of relief).
>
> AND
>
> "The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you."

4. Waiver of Service

Family Code Sec. 6.4035

A party to a suit for dissolution of marriage may waive issuance or service of process after the suit is filed by filing with the Clerk a waiver acknowledging receipt of a copy of the filed petition. The respondent must be provided a file-marked copy of the petition prior to signing the waiver. The waiver must contain the mailing address of the party who executed the waiver. It must be sworn, but may not be sworn before an attorney in the suit. In 2013 Section 6.4035(c) was amended to provide that notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. Additionally, the Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

HB 1366 (83rd Leg.)

Family Code Sec. 6.710

If a party waives service, the Clerk must mail a notice of the signing of the final decree of dissolution of a marriage to that party by mailing the copy to the mailing address contained in the waiver or to the office of the party's attorney of record. The notice must state that a copy of the decree is available at the office of the Clerk of the court and include the physical address of that office.

HB 2422 (82nd Leg.)

5. Report of Divorce or Annulment

TRCP 119a

In divorces or annulments, the Clerk mails a notice of the signing of the final decree or order of dismissal to the party signing a waiver of issuance of service of process. Note that TRCP 119a has not yet been amended in light of the change to Family Code Section 6.710. However, in this instance, the statute (TFC 6.710) controls.

Health & Safety Code Sec. 194.002

The Clerk also files, not later than the ninth day of each month, with the Bureau of Vital Statistics a report for each divorce or annulment granted during the preceding calendar month. For each report that a District Clerk files with the Bureau of Vital Statistics, the Clerk may collect a $1.00 fee as costs in the case in which the divorce or annulment of marriage is granted. The report may be returned to the District Clerk for correction by the Bureau of Vital Statistics, if there is no attorney of record in the case. The Clerk is responsible for completing all required information before submitting it to the Bureau of Vital Statistics, even if the petitioner or attorney did not provide it.

At the time the petition is filed, the petitioner must file a completed report that may be used by the District Clerk to comply with the reporting requirements in the preceding paragraph. *Family Code Sec. 6.410*

A Clerk may not transmit to the Bureau of Vital Statistics the pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void. *Family Code Sec. 108.002*

6. Change of Name of Party to Divorce Suit

In a decree of divorce or annulment, the court must change the name of a party specifically requesting the change to a name previously used unless the court states in the decree a reason for denying the change of name. A person whose name is changed under this section may apply for a change of name certificate from the Clerk of the court. *Family Code Sec. 6.706*

On the final disposition of a suit for divorce, annulment, or to declare a marriage void, the court must enter a decree changing the name of a party specially praying for the change to a prior used name unless the court states in the decree a reason for denying the change of name. A person whose name is changed under this section may apply for a change of name certificate from the Clerk of the court. *Family Code Sec. 45.105*

A change of name certificate constitutes proof of the change of name of the person named in the certificate. It is a one-page document that includes: *Family Code Sec. 45.106*

- Name of the person before the change of name was ordered
- Name to which the person's name was changed by the court
- Date on which the name change was made
- Person's social security number and driver's license number, if any
- Name of the court in which the name change was ordered
- Signature of the Clerk of the court that issued the certificate

An applicant for a change of name certificate must pay a $10 fee to the Clerk of the court for issuance of the certificate.

7. Protective Order in a Suit for Dissolution of Marriage

On the motion of a party to a suit for dissolution of a marriage, the court may render a protective order as provided by Subtitle B, Title 4, Family Code (Chapter 81 *et seq.*). Such an order is appealable, but only after the decree of dissolution becomes a final, appealable order. *Family Code Sec. 6.504 Sec. 81.009*

A person who is a party to a pending suit for the dissolution of a marriage or a suit affecting the parent-child relationship and who wishes to apply for a protective order with respect to the person's spouse must file an application for the order as required by Chapter 85, Subchapter D, Family Code. *Family Code Sec. 82.005*

A protective order rendered under Chapter 85, Family Code, is valid and enforceable, pending further action by the court that rendered the order, until it is properly superseded by another court with jurisdiction over the order. The court may not render one order that applies to both parties. *Family Code Sec. 85.009 Sec. 85.003*

The requirements of service of notice under Section 82.043, Family Code, do not *Family Code Sec. 82.043(e)*

apply if the application is filed as a motion in a suit for the dissolution of a marriage. Notice is given in the same manner as in any other motion in a suit for the dissolution of a marriage.

A protective order in a suit for dissolution of a marriage must be in a document separate from other orders or temporary orders and must be entitled "PROTECTIVE ORDER." *Family Code Sec. 85.004*

> ***NOTE:*** *Special confidentiality provisions apply to applications for protective orders in counties with a population of 3.4 million or more. See Family Code Section 82.010.*
>
> ***NOTE:*** *Special confidentiality provisions also apply to all pleadings and other documents filed in a suit for dissolution of marriage in counties with a population of 3.4 million or more. See Family Code Section 6.411.*

B. ADOPTION

1. Filing of Adoption Suit

Filing procedures for adoptions are identical to other civil cases. An adoption case should be filed as a new case with the customary fees and in a new file having a new docket number. *Family Code Sec. 102.013(b)*

2. Sealing of File

The court, on the motion of a party or on the court's own motion, may order the sealing of the file and the minutes of the court, or both, in a suit requesting an adoption. Rendition of an order sealing the file does not relieve the Clerk from the duty to send information regarding adoption to the Bureau of Vital Statistics. *Family Code Sec. 162.021*

3. Confidentiality Maintained by Clerk

The records concerning a child that are maintained by the District Clerk after entry of an order of adoption are confidential. No person is entitled to access to the records or may obtain information from the records except for good cause under an order of the court that issued the order. *Family Code Sec. 162.022 Sec. 108.003*

4. Transmission of Information Regarding Adoption to Bureau of Vital Statistics

The Clerk of a court that renders a decree of adoption shall, not later than the 10th day of the first month after the month in which the adoption is rendered, transmit to the central registry of the Bureau of Vital Statistics a certified report of adoption that includes: *Family Code Sec. 108.003(a)* *Health & Safety Code Sec. 192.009*

- Name of the adopted child after adoption as shown in the adoption order
- Birth date of the adopted child
- Docket number of the adoption suit
- Identity of the court rendering the adoption
- Date of the adoption order
- Name and address of each parent, guardian, managing conservator, or

other person whose consent to adoption was required or waived under Chapter 162, or whose parental rights were terminated in the adoption suit

- Identity of the licensed child placing agency, if any, through which the adopted child was placed for adoption
- Identity, address, and telephone number of the registry through which the adopted child may register as an adoptee

If the report requires correction, the Bureau of Vital Statistics sends it to the attorney of record in the adoption case. If there is no attorney of record, the Bureau of Vital Statistics sends the report to the Clerk for correction and return.

Health & Safety Code Sec. 192.009(d)

Family Code Sec. 108.003(c)

After an adoption, the state registrar prepares and files a new birth certificate showing the facts as established by adoption. A copy of the new certificate is sent to the County Clerk of the county of birth. The original birth certificate is pulled from the files of the County Clerk and sent to the Bureau of Vital Statistics. The index entry to the original certificate is obliterated. The new birth certificate, containing the child's new name, is then recorded and indexed.

5. Foreign Adoptions

An adoption order from a foreign country, granted to a Texas resident, is granted full force and effect, providing certain conditions are met.

Family Code Sec. 162.023(a)

The foreign adoption order may be registered by filing a petition for registration, which may be combined with a petition for name change. The usual filing fees apply.

Family Code Sec. 162.023(b)

If the court finds the foreign adoption order complies with the conditions set forth in subsection (a), it orders the state registrar to register the order and file a birth certificate.

Family Code Sec. 162.023(b)

Health & Safety Code Sec. 192.006

C. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Termination suits may be either voluntary or involuntary. A termination suit may arise in several different contexts, such as:

- Private termination between one parent and the other, usually to facilitate a stepparent adoption
- Intervention by the state to terminate allegedly culpable parents on grounds of abuse or neglect of the child
- Termination by an adoption agency to facilitate the adoption of an infant

1. Docketing Requirements

A suit for the termination of the parent-child relationship may be filed before the birth of the child. If the suit is filed before the birth of the child, the petition must be styled "In the Interest of an Unborn Child."

Family Code Sec. 161.102

After the birth, the Clerk shall change the style of the case to "In the Interest of _____, a Child." If adoption of the child is also requested, the name of the child may be omitted.

Family Code Sec. 102.008(a)

NOTE: *Special confidentiality provisions apply in counties with a population of more than 3.4 million. See Family Code Section 102.0086.*

Family Code Sec. 102.0086

NOTE: *Family Code Section 161.005 contains provisions governing situations of mistaken paternity. Thus, a man who, without obtaining genetic testing signed an acknowledgment of paternity or who was adjudicated to be the father of a child in a proceeding in which genetic testing did not occur, may be able to file a suit for termination of his parent-child relationship with the child if he satisfies the requirements contained in the statute. The original provisions were enacted in 2011 and were amended in 2013 in HB 154 (83rd Legislature). The amendments extend the deadline to file a suit to not later than the second anniversary of the date on which the petitioner becomes aware of the facts alleged in the petition indicating the petitioner is not the child's genetic father. The amendment establish that an order terminating the parent-child relationship based on the result of genetic testing, in addition to ending the petitioner's obligation to pay future child support as of the date the order is rendered, also ends the petitioner's obligation to pay interest that accrues after that date on the basis of a child support arrearage or money judgment for a child support arrearage existing on that date. The order does not affect the petitioner's obligation for support of the child incurred before the date of the order. Those prior obligations are enforceable until satisfied by any means available for the enforcement of child support other than contempt.*

Family Code Section 161.005

HB 154 (83rd Leg)

D. ESTABLISHMENT OF PATERNITY

A father may voluntarily acknowledge paternity of a child by signing an acknowledgment of paternity with the intent to establish the man's paternity. It must be in writing and must be signed by both the mother and the man claiming to be the biological father. The record is filed with the Bureau of Vital Statistics, which may not charge a fee for its filing. A parent-child relationship is thus established, which applies for all purposes. The Bureau of Vital Statistics also may not charge a fee for filing a denial of paternity or a rescission of an acknowledgment of paternity or denial of paternity.

Family Code Sec. 160.301 Sec. 160.302 Sec. 160.306 Sec. 160.203

SB 502 (82nd Leg.)

SB 502 (82nd Legislature) makes significant changes in the statutes governing acknowledgment of paternity, rescission of an acknowledgment or denial of paternity, and adjudication of the parentage of a child having a presumed father.

A man may register with the Bureau of Vital Statistics to be notified of an adoption or termination of parental rights proceeding concerning any child he may have fathered. A man is entitled to notice regardless of whether he has registered with the Bureau of Vital Statistics if a parent-child relationship has been established or if he commences a proceeding to adjudicate paternity before the court has terminated his parental rights. Notice is given in the manner prescribed for service of process in a civil action.

Family Code Sec. 160.402 Sec. 160.411 Sec. 160.403

A civil proceeding may be filed to adjudicate the parentage of a child. The proceeding is governed by the Rules of Civil Procedure, except as provided by Family Code Chapter 233 (CSRP). The mother of the child and the man whose paternity is to

Family Code Sec. 160.601 Sec. 160.603 Sec. 160.633

be adjudicated must be parties to the suit. Proceedings, papers and records are open to the public as in other civil cases.

If the court has issued an order relating to an earlier born child of the same parents, the Clerk must file the suit and all other papers under the same docket number as the prior action. For all other purposes, including the assessment of fees and other costs, the suit is a separate suit. *Family Code Sec. 102.013(c)*

The court adjudicates paternity without a jury. Once a determination has been made, the court issues appropriate orders concerning assessment of fees, the child's birth certificate, and child support. *Family Code Sec. 160.632 Sec. 160.636*

A report of each determination of paternity in this state must be filed with the state registrar. *Health & Safety Code Sec. 192.0051(a)*

On a determination of paternity, the petitioner must provide the Clerk of the court in which the order was rendered the information necessary to prepare the report of determination of paternity. The Clerk then must: *Family Code Sec. 108.008*

- Prepare the report of determination of paternity on a form provided by the Bureau of Vital Statistics.
- Complete the report immediately after the decree becomes final.

On completion of the report, the Clerk of the court forwards to the state registrar a report for each order that became final in that court.

E. GESTATIONAL AGREEMENTS

Subchapter I of the Family Code (Section 160.751 *et seq.)* sets forth very specific requirements for gestational agreements entered into between prospective parents and the surrogate mother. It also sets forth requirements for validating the gestational agreement. Only those sections that trigger an action by the Clerk are discussed here.

The intended parents and the gestational mother file a petition to validate the gestational agreement. A copy of the gestational agreement must be attached to the petition. *Family Code Sec. 160.755*

If the court finds that all requirements are met, it issues an order validating the gestational agreement and declaring the intended parents will be the parents of the child born under the agreement. The intended parents are required to give notice to the court of the birth of the child. *Family Code Sec. 160.756(c) Sec. 160.760(a)*

If the intended parents fail to file the required notice, the gestational mother or an appropriate state agency may file it. Upon showing than an order validating the gestational agreement was rendered, the court must order that the intended parents are the child's parents and are financially responsible for the child. *Family Code Sec. 160.760(d)*

After receipt of notice of the birth, the court issues an order confirming that the intended parents are the parents of the child, and requiring the Bureau of Vital Statistics to issue a birth certificate naming the intended parents as the child's parents. *Family Code Sec. 160.760(b)*

Before the gestational mother becomes pregnant using assisted reproductive means, she, her husband, or either intended parent may terminate the gestational agreement. The party terminating the agreement must give written notice to each other party, and must file the notice with the court. Upon receipt of the notice of termination, the court vacates the order validating the agreement. *Family Code Sec. 160.759*

Any gestational agreement that is not validated as provided by Subchapter I of the Family Code is not enforceable. *Family Code Sec. 160.762*

F. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

1. Commencement of Action

A suit is begun by the filing of a petition. The suit may be filed by the parent of the child; the child through an authorized representative; a governmental entity; an authorized agency; or any of several categories of people having care, custody and control of the child, including foster parents and guardians. A suit may also be filed by a prospective adoptive parent, pursuant to an executed statement to confer standing. The requirement to include a statement on alternative dispute resolution in the first pleading filed (former Family Code Section 102.0085) was repealed by the 78th Legislature [Regular Session] (2003). *Family Code Sec. 102.002 Sec. 102.003 Sec. 102.0035*

2. Docketing Requirements

In a suit for modification or a motion for enforcement, the Clerk must file the petition or motion and all related papers under the same docket number as the prior proceeding without additional letters, digits, or special designations. *Family Code Sec. 102.013(a)*

3. Citation

Citation in a suit affecting the parent-child relationship may be by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published **one** time only. If service is by publication, a statement of the evidence of service, approved and signed by the court, must be filed with the papers of the suit as a part of the record. *Family Code Sec. 102.010(a) Sec. 102.010(b) Sec. 102.010(d)*

The citation, whether for personal service or by publication, must contain the following information: *Family Code Sec. 102.010(c)*

> "You have been sued. You may employ an attorney. If you or your attorney do (does) not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you. The petition of _____, Petitioner, was filed in the _____Court of County, Texas, on the _____ day of _____, against _____, Respondent(s), numbered _____, and entitled 'In the interest of _____, a child (or children).' The suit requests (statement of relief requested, e.g., 'terminate the parent-child relationship'). The date and place of birth of the child (children) who is (are) the subject of the suit: _____.
>
> "The court has authority in this suit to render an order in the child's (children's) interest that will be binding on you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's (children's) adoption."

4. Contents of Final Order

A final order in a suit affecting the parent-child relationship, other than a suit under Chapters 161 or 162 of the Family Code, must contain: *Family Code Sec. 105.006(a)*

- Social security number and driver's license number of each party to the suit, including the child's, if those numbers assigned have been assigned to the child
- Current residence address, mailing address, home phone number, name of employer, address of employment, and work phone number of each party

A court must order each party to inform each other party, the court that rendered the order, and the state case registry under Chapter 234, Family Code, of an intended change in any of the information listed above, as long as any person, as a result of the order, is under an obligation to pay child support or is entitled to possession of or access to a child. The court shall order that notice of the intended change be given at the earlier of: *Family Code Sec. 105.006(b)*

- The 60th day before the date the party intends to make the change
- The fifth day after the date that the party knew of the change, if the party did not know or could not have known of the change in sufficient time to comply with the above time requirement

If a court finds after notice and hearing that requiring a party to provide the information described above to another party is likely to cause the child or a conservator harassment, abuse, serious harm, or injury, the court may do one of the following: *Family Code Sec. 105.006(c)*

- Order the information not to be disclosed to another party.
- Render any other order the court considers necessary.

An order in a parent-child relationship suit that orders child support or possession of or access to a child must contain the following statement in bold-faced type, capital letters, or underlined: *Family Code Sec. 105.006(d)*

> **"FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.**
>
> **"FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.**

"FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY."

Family Code Sec. 105.006(e)

Unless excepted by the court, an order in a parent-child relationship case that orders child support or possession of or access to a child must also contain the following notice in bold-faced type, capital letters, or underlined:

"EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVERS LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

"THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

"FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS."

An order in a suit that provides for possession of or access to a child must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

5. Motions to Enforce

A motion for enforcement may be filed to enforce a final order for conservatorship, child support, possession of or access to a child, or other provisions of a final order. The Clerk must file the motion and all related papers under the same docket number as the prior proceeding without additional letters, digits, or special designations.

Family Code Sec. 157.001(a)
Family Code Sec. 102.013(a)

Notice of a hearing on a motion seeking enforcement of an existing court order providing for child support or possession of or access to a child must be personally served on the respondent not later than the 10th day before the date of the hearing on the motion.

Family Code Sec. 157.062(c)

If, however, a party has been ordered to provide the court and the state case registry with the party's current mailing address, notice of a motion for enforcement may be served by mailing a copy of the notice and the motion to the respondent by first-class mail to the last mailing address of the respondent on file with the court and the registry. The Clerk, the movant's attorney, or any person entitled to the address information as provided in Chapter 105, Family Code, may send this notice. A person who sends the notice must file of record a certificate of service showing the date of mailing and the name of the person who sent the notice.

Family Code Sec. 157.065

If a respondent who has been personally served with notice to appear at a hearing on a motion for enforcement does not appear, the court may not hold the respondent in contempt but may grant a default judgment and issue a capias for the arrest of the respondent. The capias is to be treated by law enforcement officials in the same manner as an arrest warrant in criminal cases. The fee for issuing a capias is $8.00 and the fee for service is the same as the fee for service of a writ in civil cases generally.

Family Code Sec. 157.066
Family Code Sec. 157.102
Sec. 157.103

If the court issues a capias, it shall also set an appearance bond or security in a reasonable amount at the same time that the capias is issued. An appearance bond in the amount of $1,000 or a cash bond in the amount of $250 is presumed to be reasonable, but the court may set a higher bond under certain circumstances.

Family Code Sec. 157.101

6. Transmission of Records

The Clerk is required to send to the Bureau of Vital Statistics a certified record of

the order rendered in a suit affecting the parent-child relationship, together with the name and all prior names, birth date, and place of birth of the child prepared by the petitioner on a form provided by the bureau.

Family Code Sec. 108.001(a)

7. Transmission of Files on Loss of Jurisdiction

On the loss of continuing, exclusive jurisdiction of a court over a child under Chapter 155 of the Family Code, the Clerk of the court must transmit to the central registry of the Bureau of Vital Statistics a certified record, on a form provided by the bureau, stating that jurisdiction has been lost, the reason for the loss of jurisdiction, and the name and all previous names, date of birth, and place of birth of the child.

Family Code Sec. 108.004

Under Chapter 155 of the Family Code, a court of this state loses its continuing, exclusive jurisdiction to modify its order regarding managing conservatorship, possessory conservatorship, possession of and access to the child, and support of the child if one of the following occurs:

Family Code Sec. 155.003 Sec. 155.004

- An order of adoption is rendered after the court acquires continuing, exclusive jurisdiction of the suit.
- The parents of the child have remarried each other after the dissolution of a previous marriage between them and file a suit for the dissolution of their subsequent marriage combined with a suit affecting the parent-child relationship as if there had not been a prior court with continuing, exclusive jurisdiction over the child.
- Another court assumed jurisdiction over a suit and rendered a final order based on incorrect information received from the Bureau of Vital Statistics that there was no court of continuing, exclusive jurisdiction.

During the transfer of a suit from a court with continuing, exclusive jurisdiction, the transferring court retains jurisdiction to render temporary orders. The jurisdiction of the transferring court terminates on the docketing of the case in the transferee court.

Family Code Sec. 155.005

8. Transfer of Continuing, Exclusive Jurisdiction

On the signing of an order of transfer of continuing, exclusive jurisdiction in a suit affecting the parent-child relationship, the Clerk of the court transferring a proceeding sends all of the following to the proper court in the county to which transfer is being made:

Family Code Sec. 155.207(a)

- Pleadings in the pending proceeding, and any other document specifically required by a party
- Certified copies of all entries in the minutes
- Certified copy of each final order

The Clerk of the transferring court keeps a copy of the transferred pleadings and other requested documents. If the transferring court retains jurisdiction of another child who was the subject of the suit, the Clerk sends a copy of the pleadings and other requested documents to the court to which the transfer is made and keeps the original pleadings and other requested documents.

Family Code Sec. 155.207(b)

On receipt of the pleadings, documents, and orders from the transferring court, the Clerk of the transferee court dockets the suit and notifies all parties, the Clerk of the

Family Code Sec. 155.207(c)

transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

The Clerk of the transferring court sends a certified copy of the order directing payments to the transferee court, to any party or employer affected by that order, and, if appropriate, to the local registry of the transferee court. *Family Code Sec. 155.207(d)*

G. CHILD SUPPORT

Support payments may only be authorized by judgment of the court. The judgment should clearly set out the amount of support, who is to pay, the required payment dates and the interval, who is to receive payment, where the payment is to be made, and the duration of the payment period. *Family Code Sec. 154.001*

Child support payments may be ordered in several different kinds of cases filed under the Family Code, including divorce cases, suits to determine parentage, protective orders, and child abuse or neglect cases.

Family Code Section 154.001 (a-1) was added by the 79th Legislature (Regular Session) in 2005. It affects parents whose parental rights have been terminated and whose children are placed in substitute care. The court may order parents who are financially able to do so to support the child. The support terminates when the child is adopted, turns 18, has his/her disabilities of a minor removed, or dies. If the child is disabled, support may continue for an indefinite period of time. *Family Code Sec. 154.001(a-1)*

> ***NOTE:*** *The Office of the Attorney General, Child Support Division, has developed a standardized form to be used by attorneys for income withholding in Tribal, intrastate, interstate, and non-governmental cases. It is called the Income Withholding for Support (IWO) and there are instructions for completing this form.*
> *The form may be located at:*
> http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154.doc
> *The instructions may be located at:*
> http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154_instructions.pdf
> *The Office of the Attorney General, Child Support Division, has also developed a form to be used by attorneys to document a child support order as it is rendered. (*form X-1*) The form may be signed by the judge to verify its contents. The completed form would then be forwarded to the District Clerk for entry into his or her automated system or into the State Disbursement Unit (SDU) database directly. The Child Support Division's intent is have a uniform system to assist counties in more timely reporting of new child support orders.*

1. Posting Guidelines

Guidelines for child support and possession of a child are set by the Legislature. (*See*, Chapters 153 and 154 of the Family Code.) A copy of the guidelines for child support and for possession of and access to a child must be prominently displayed at or near the entrance to the courtroom of every court having jurisdiction over child support and possession suits. *Family Code Sec. 111.002 Sec. 111.003*

2. Withholding from Earnings for Child Support

a. Income Withholding

In every proceeding in which periodic payments of child support are ordered, modified, or enforced, the court must order that income be withheld from the disposable earnings of the obligor. Except in a IV-D case, if good cause is found by the court, the withholding order need not be delivered to the employer until one of the following occurs:

Family Code Sec. 154.007 Sec. 158.002

- The obligor has been in arrears for an amount due for more than 30 days.
- The amount of the arrearages is an amount equal to or greater than the amount due for a one-month period.
- Any other violation of the child-support order has occurred.

An order or writ for income withholding remains in effect until all current and in arrears support, interest, and fees and costs have been paid. This includes any ordered attorney's fees.

Family Code Sec. 158.102

However, attorney's fees and certain other costs may be withheld from income only for an order or writ enforcing a child support obligation, not one establishing it.

A.G. Op. JC-0346 (2001)

b. Issuance and Delivery of Order or Writ of Income Withholding

A request for issuance of an order or judicial writ of withholding may be filed by the prosecuting attorney, the Title IV-D agency, the friend of the court, the obligor, the obligee, a domestic relations office, or an attorney representing the obligor or obligee. The Clerk of the court causes a certified copy of the order or writ withholding income from earnings to be delivered to the obligor's current employer or to any subsequent employer of the obligor. The Clerk must issue and deliver the certified copy of the order or writ not later than the fourth working day after the date the order is signed or the request is filed, whichever is later. Delivery of the order or writ to the employer must be by certified or registered mail, return receipt requested, by electronic transmission (including e-mail or fax), or by service of citation to the person authorized to receive service of process for the employer in civil cases generally or a person designated by the employer, by written notice to the Clerk, to receive orders or notices of withholding.

Family Code Sec. 158.104 Sec. 158.105

The Clerk may deliver an order or judicial writ of withholding by electronic mail if the employer has an e-mail address, or by fax if the employer can receive documents in that manner. If the Clerk uses e-mail, the Clerk must request acknowledgment of receipt from the employer, or the Clerk must use an electronic mail system with a read receipt capability. If delivery is accomplished by fax, the Clerk's fax machine must create a delivery confirmation receipt.

The Title IV-D agency (the Office of the Attorney General in Texas) may issue an administrative writ of withholding for enforcement of an existing order of child support. A domestics relations office may issue an administrative writ of withholding when the office is providing child support enforcement services. (All provisions that apply to the Title IV-D agency apply to a domestic relations office.)

Family Code Sec. 158.501 - 158.507

The Office of the Attorney General is responsible for notifying the obligee, obligor and obligor's employer. The Office of the Attorney General must also file a copy of the administrative writ, together with a signed certificate of service, not later

HB 1674 (82nd Leg.)

than the third business day after the date of delivery of the administrative writ of withholding to an employer with the District Clerk; or, maintain a record of the writ until all support obligations of the obligor have been satisfied or income withholding has been terminated. An administrative writ terminating withholding may be issued and delivered to an employer by the Title IV-D agency when all current support, including medical support, and child support arrearages have been paid.

c. Voluntary Withholding by Obligor

Family Code Sec. 158.011

An obligor may file with the Clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. Such a request may be filed regardless of whether a writ or order has been served on any party or of the existence or amount of an arrearage. On receipt of such a request, the Clerk issues and delivers a writ of withholding in the manner described above.

A writ of withholding may not reduce the total amount of child support, including arrearages, owed by the obligor.

An employer that receives a writ of withholding or an obligor whose employer receives a writ of withholding may request a hearing. An obligee may contest a writ of withholding by requesting a hearing not later than the 180th day after the date on which the obligee discovers that the writ has been issued.

d. Fee for Issuing and Delivering Writ

Family Code Sec. 110.004

The Clerk of the court may charge the requestor a fee in a reasonable amount set by the Clerk, not to exceed $15.00, for **each** writ of income withholding issued and delivered to an employer.

e. Notice of Termination of Employment and of New Employment

Family Code Sec. 158.211

If an obligor terminates employment with an employer who has been withholding income, both the obligor and the employer must notify the court or the Title IV-D agency, and the obligee of that fact not later than the seventh day after the date employment terminated and must provide the obligor's last known address and the name and address of the obligor's new employer, if known. The obligor has a continuing duty to inform any subsequent employer of the order or writ of withholding after obtaining employment.

f. Notice of Application for Judicial Writ of Withholding

Family Code Sec. 158.301(a)

If a delinquency occurs in child support payments in an amount equal to or greater than the total due for one month or income withholding was not ordered at the time child support was ordered, the Attorney General's Office, attorney representing the local domestic relations office, attorney appointed friend of the court, the obligor or obligee, or a private attorney representing the obligor or obligee may file a notice of application for judicial writ of withholding. This notice must, among other things, state the amount of monthly support due and the arrearages, contain a statement that withholding applies to each current or subsequent employer or period of employment, and contain a statement that if the obligor does not contest the withholding within 10 days after receipt, the employer will be notified to begin withholding.

Family Code Sec. 158.302

If the obligor does not file a motion to stay issuance of the writ of withholding within the time limits specified in Section 158.307 of the Family Code (i.e., not later

Family Code Sec. 158.312(a)

than the 10th day after the date the notice of withholding was received), the party who filed the application for judicial writ of withholding must file with the Clerk a request for issuance of a writ of withholding. If the obligor files a motion to stay, this prohibits the Clerk of the court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.

Family Code Sec. 158.308

The request for issuance of a writ of withholding may not be filed before the 11th day after the date of receipt of the notice of application for judicial writ of withholding by the obligor.

Family Code Sec. 158.312(b)

On the filing of a request for issuance of a writ of withholding, the Clerk of the court issues the writ. The writ must be delivered to the employer as provided by Chapter 158, Family Code, discussed in subsection b above. The Clerk must issue and mail the writ not later than the second working day after the date the request is filed.

Family Code Sec. 158.313(a) Sec. 158.105 Sec. 158.313(b) Sec. 158.313(c)

The judicial writ of withholding must direct that the employer or a subsequent employer withhold from the obligor's disposable income for current child support, including medical support, and child support arrearages an amount that is consistent with the provisions of Chapter 158 of the Family Code regarding orders of withholding.

Family Code Sec. 158.314

g. Issuance and Delivery of Writ of Withholding to Subsequent Employer

After the issuance of a judicial writ of withholding by the Clerk, a party authorized to file a notice of application for judicial writ of withholding may issue the judicial writ of withholding to a subsequent employer of the obligor by delivering to the employer by certified mail a copy of the writ.

Family Code Sec. 158.319

The judicial writ must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

The party must file a copy of the judicial writ with the Clerk not later than the third working day following delivery of the writ to the subsequent employer.

The party must file the postal return receipt from the delivery to the subsequent employer not later than the third working day after the party receives the receipt.

h. Modification, Reduction, or Termination of Withholding

i. Modifications to or Termination of Withholding by the Title IV-D Agency

The Title IV-D agency establishes procedures for the reduction in the amount of or termination of withholding from income on the liquidation of an arrearages or the termination of the obligation of support in Title IV-D cases. The procedures must provide that the payment of overdue support may not be used as the sole basis for terminating withholding.

Family Code Sec. 158.401

At the request of the Title IV-D agency, the Clerk of the court issues a judicial writ of withholding to the obligor's employer reflecting any modification or changes in the amount to be withheld or the termination of withholding.

ii. Effect of Agreement by Parties

An obligor and obligee may agree on a reduction in or termination of income withholding for child support under very limited circumstances (such as when the child

Family Code Sec. 158.402

turns 18, marries, or dies). The obligor and obligee may file a notarized or acknowledged request with the Clerk of the court under Section 158.011, Family Code, for a revised judicial writ of withholding including the termination of withholding. The Clerk must issue and deliver to the obligor's employer a judicial writ of withholding that reflects the agreed revision or the termination of withholding.

iii. Modifications to or Termination of Withholding in Voluntary Withholding Cases

Family Code Sec. 158.403

If an obligor initiates voluntary withholding under Section 158.011 of the Family Code, the obligee or an agency providing child support services may file with the Clerk of the court a notarized request signed by the obligor and the obligee or agency, as appropriate, for the issuance and delivery to the obligor of either of the following:

- Modified writ of withholding that reduces the amount of withholding
- Notice of termination of withholding

On receipt of such a request, the Clerk shall issue and deliver a modified writ of withholding or notice of termination to the obligor's employer.

Family Code Sec. 158.403

An obligee may contest a modified writ of withholding or notice of termination that has been issued by requesting a hearing not later than the 180th day after the date the obligee discovers that the writ or notice has been issued.

iv. Delivery of Order of Reduction or Termination of Withholding

Family Code Sec. 158.404

If a court has rendered an order that reduces the amount of child support to be withheld or terminates withholding for child support, any person or governmental entity may deliver to the employer a certified copy of the order without the requirement that the Clerk of the court deliver the order.

3. Child Support Liens

Family Code Sec. 157.312 - 157.322

A child support lien arises against an obligor's real and personal property for all child support due and owing. To enforce the lien, the claimant may file a child support lien notice with the appropriate County Clerk and copies with other parties, as set forth in the statute. The lien then attaches to all nonexempt personal and real property, and remains in effect (subject to the new and amended Family Code sections discussed hereinafter) until payment in full is made. HB 1674 (82nd Legislature) expands the types of property to which a child support lien may attach to include the proceeds of an insurance policy, including the proceeds from a life insurance policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation, or a settlement or award for the claim for compensation, due to or owned by the obligor; and, property seized and subject to forfeiture under Chapter 59, Code of Criminal Procedure.

Section 157.3171 was added to the Family Code effective September 1, 2009. This section provides a procedure for securing the release of a child support lien on property which the obligor asserts is homestead property. Section 157.318 was also amended effective September 1, 2009, by adding Subsection (d). This subsection imposes a specific time limitation on the duration of a child support lien on real property, unless the lien is timely renewed by the claimant.

Except as noted above, the release of a child support lien is accomplished by the claimant filing a release of lien with the appropriate County Clerk and notifying all parties who were originally served with the lien notice.

Typically, other than filing the notice of lien and notice of release of lien in the case file, the District Clerk has no specific duties in connection with child support liens. *Family Code Sec. 157.314(b)(1) Sec. 157.322(b)(2)*

4. Clerk's Duties

a. When Local Registry in District Clerk's Office

Each county in Texas has a registry (known as the "local registry") for the collection and distribution of child support. In most counties, the registry is in the District Clerk's office. A local registry receives child support payments; maintains records of child support payments; distributes child support payments as required by law; and maintains custody of the records of official child support payments. A private entity may perform the duties and functions of a local registry either under a contract with a county commissioners court or domestic relations office, or under an appointment by a court. *Family Code Sec. 101.018*

Family Code Section 110.006, Domestic Relations Office Operations Fees and Child Support Service Fees, has been revised. There is now a distinction between procedures to follow if an initial operations fee is adopted under Section 203.005(a) (1) versus procedures to follow if an initial child support service fee under Section 203.005(a) (2) is adopted. If an administering entity of a domestic relations office adopts an initial operations fee under Section 203.005(a)(1), the Clerk of the court shall collect the operations fee at the time the original suit, motion for modification, or motion for enforcement, as applicable, is filed and shall send the fee to the domestic relations office. If an administering entity of a domestic relations office adopts an initial child support service fee under Section 203.005(a) (2), the Clerk of the court shall collect the child support service fee at the time the original suit is filed and shall send the fee to the domestic relations office. The revised statute also provides that the fees described by Section 110.006(a) and (b) are not filing fees for purposes of Section 110.002 or 110.003. *Family Code Sec. 110.006*

A local registry receives a court-ordered child support payment or a payment otherwise authorized by law and forwards the payment, as appropriate, to the Title IV-D agency, local domestic relations office, or obligee within two working days after the date the local registry receives the payment. (The Office of the Attorney General is designated as the state's Title IV-D agency.) *Family Code Sec. 154.241(a)* *Family Code Sec. 231.001*

A local registry may not require an obligor, obligee, or other party or entity to furnish a certified copy of a court order as a condition of processing child support payments and must accept as sufficient authority to process the payments a photocopy, facsimile copy, or conformed copy of the court's order. *Family Code Sec. 154.241(b)*

A local registry must include with each payment it forwards to the Title IV-D agency the date it received the payment and the withholding date furnished by the employer. *Family Code Sec. 154.241(c)*

A local registry will accept child support payments made by personal check, money order, or cashier's check. A local registry may refuse payment by personal check if a pattern of abuse regarding the use of personal checks has been established. Abuse includes checks drawn on insufficient funds and other actions that delay or disrupt the registry's operation. *Family Code Sec. 154.241(d)*

Subject to Section 154.004 of the Family Code, which requires that the Clerk forward to the Title IV-D agency all payments received in a Title IV-D case, at the request of an obligee, a local registry must redirect and forward a child support payment to an address and in care of a person or entity designated by the obligee. A local registry may require that the obligee's request be in writing or be made on a form provided by the local registry for that purpose, but may not charge a fee for receiving the request or redirecting the payment as requested.

Family Code Sec. 154.241(e)

A local registry may accept child support payments made by credit card, debit card, or automatic teller machine card.

Family Code Sec. 154.241(f)

> ***NOTE:*** *Unless a new court order has been issued to change the recipient of child support payments, a District Clerk must pay child support payments to the person designated in the existing child support order or in that portion of a divorce decree providing for child support. The child support obligee may not modify the court's order by asking the Clerk to send payments to another person or entity. Thus, a District Clerk must continue to pay the obligee designated in the court order even though the obligee has filed with the Clerk a limited power of attorney assigning the child's right to child support payments to a corporation and a request that the Clerk send the child support payments to that corporation.*
>
> *AG Op. DM-222 (1993)*
>
> *A District Clerk may, however honor a change of address request, even if the new address is "in care of" a child support collection agency. Thus, a child support obligee who has properly completed and submitted the change of address request may do so without a court order modifying the original child support order to reflect the change of address.*
>
> *AG Op. DM-296 (1994)*

b. Place of Payment

The court orders the payment of child support to the state disbursement unit, as provided by Chapter 234 of the Family Code.

Family Code Sec. 154.004

In a Title IV-D case, the court or the Title IV-D agency orders that income withheld for child support be paid to the Texas state disbursement unit, or if appropriate, to the state disbursement unit of another state.

This does not apply to child support orders that were initially rendered by a court prior to January 1, 1994, or that are not being enforced by the Title IV-D agency.

c. Payment or Transfer of Child Support Payments by Electronic Funds Transfer

A child support payment may be made by electronic funds transfer to the Title IV-D agency, a local registry if the registry agrees to accept electronic payment, or the state disbursement unit.

Family Code Sec. 154.242(a)

A local registry may transmit child support payments to the Title IV-D agency by electronic funds transfer. Unless support payments are required to be made to the state disbursement unit, an obligor may make payments, with the approval of the court entering the order, directly to the bank account of the obligee by electronic transfer and provide verification of the deposit to the local registry. A local registry in a county that makes deposits into personal bank account by electronic funds transfer as of April 1,

Family Code Sec. 154.242(b)

1995, may transmit a child support payment to an obligee by electronic funds transfer if the obligee maintains a bank account and provides the local registry with the necessary bank account information to complete electronic payment.

d. Record of Child Support Payments

The accounting system for the local registry is relatively simple and most Clerks employ only two ledgers: a ledger card for each case and a master list.

The ledger card (either a hard copy or electronic version) for each individual case should contain the following:

- Name and address of the person making support payments
- Name and address of the person receiving support payments
- Case number of the civil action leading to the support judgment
- Entry for every receipt of payment and its subsequent disbursement

Ledger cards should be kept alphabetically by the last name of the person making support payments.

A master ledger should be kept showing all payments received and disbursed. The master ledger should always show receipts equal to disbursements because all money received is immediately passed on to the recipient. The exact format of the master ledger will vary depending on the accounting and reporting system of the local Clerk's office.

e. Production of Child Support Payment Record

Family Code Sec. 154.243

The Title IV-D agency, a local registry, or the state disbursement unit may comply with a subpoena or other order directing the production of a child support payment record by sending a certified copy of the record or an affidavit regarding the payment record to the court that directed production of the record.

f. Processing Child Support Payments

In processing child support payments, the Clerk merely acts as a middleman for the person making the payment and the person receiving the payment. Some Clerks require that all support payments be in the form of a check or money order made out to the recipient. In this case, the Clerk notes the receipt of the payment to the recipient. Other Clerks prefer to deposit all payments into a support fund checking account and issue checks to the recipients from that account. Either method is acceptable, so long as it is consistent within the county.

While the Clerk is responsible for keeping track of all support payments, the Clerk is not responsible to enforce such payments. The Clerk may, however, be called upon to testify as to the contents of the support account.

Family Code Sec. 202.003

If the Clerk is designated to receive child support under a court order, the Clerk will, if ordered by the court, report on a monthly basis to the court, or a friend of the court if one is appointed, any delinquency and arrearage in child support payments, and any violation of an order relating to possession of or access to the child.

Family Code Sec. 231.204 Sec. 231.206

In Title IV-D cases, the Clerk may not charge the Title IV-D agency certain fess. These include a judicial fund fee, a court reporter fee, except as provided by Section

231.209, a fee for a child support registry, enforcement office, or a domestic relations office, or a statewide electronic filing system fund fee. A fee for processing the support payment may not be collected from the Title IV-D agency, or a managing or possessory conservator in a Title IV-D case.

SB 355 and HB 2302 (83rd Leg.)

g. Transfer of Child Support Registry

On rendition of an order transferring continuing, exclusive jurisdiction of a suit affecting the parent-child relationship to another court, the transferring court will also order that all future payments of child support be made to the local registry of the transferee court, or, if payments have been previously directed there, the state disbursement unit. The transferring court's local registry, or the state disbursement unit shall continue to receive, record and forward child support payments to the payee until it receives notice that the transferred case has been docketed by the transferee court. After receiving notice of docketing from the transferee court, the transferring court's local registry must send a certified copy of the child support payment record to the Clerk of the transferee court and must forward any payments received to the transferee court's local registry or to the state disbursement unit, as appropriate.

Family Code Sec. 155.205

5. Accrual of Interest on Child Support

Interest accrues on the portion of delinquent child support that is greater than the amount of the monthly periodic support obligation at the rate of six (6) percent simple interest per year from the date the support is delinquent until the date the support is paid or the arrearages are confirmed and reduced to money judgment. Interest accrues on child support arrearages that have been confirmed and reduced to money judgments at the rate of six (6) percent simple interest per year from the date the order is rendered until the date the judgment is paid. Interest accrues on a money judgment for retroactive or lump sum child support at the annual rate of six (6) percent simple interest from the date the order is rendered until the judgment is paid.

Family Code Sec. 157.265(a)-(c)

The above calculations apply to obligations, arrearages and money judgments in effect on or after January 1, 2002. Arrearages in existence as of that date, which had not been reduced to a money judgment, accrue interest at the rate in that applied to arrearages before that date; the cumulative total of arrearages and interest as of January 1, 2002, are subject to the calculations described above. Money judgments rendered before January 1, 2002, are governed by the law in effect on the date the judgment was rendered.

Family Code Sec. 157.265(d)-(f)

Interest begins to accrue on the date the judge signs the order for the judgment unless the order contains a statement that the order is rendered on another specific date.

Family Code Sec. 157.271(b)

A child support payment is delinquent for the purpose of accrual of interest if the payment is not received before the 31st day after the payment date stated in the order by the local registry, the Title IV-D agency, the state disbursement unit, or the obligee or entity specified in the order, if payments are not made through a registry.

Family Code Sec. 157.266

If a payment date is not stated in the child support order, a child support payment is delinquent if payment is not received by the obligee, registry, or entity specified in the order on the date that an amount equal to the support payment for one month becomes past due.

Accrued interest is part of the child support obligation and may be enforced by any means provided for the collection of child support. Child support collected will be applied in the following order of priority effective January 1, 2010:

Family Code Sec. 157.267 Sec. 157.268

1. Current child support
2. Non-delinquent child support owed
3. The principal amount of child support that has not been confirmed and reduced to money judgment;
4. The principal amount of child support that has been confirmed and reduced to money judgment
5. Interest on the principal amounts specified in Subdivisions (3) and (4), and
6. The amount of any ordered attorney's fees or costs, or Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible.

6. Friend of the Court

Family Code Sec. 202.001

After an order for child support or possession of or access to a child has been rendered, a court on its own motion or on the request of a person alleging that the order has been violated may appoint a friend of the court. The purpose of the friend of the court is to assist the court in monitoring and enforcing its orders. In the execution of a friend of the court's duties, a friend of the court must represent the court to ensure compliance with the court's order.

Family Code Sec. 202.002

A friend of the court may coordinate nonjudicial efforts to improve compliance with a court order relating to child support, possession or access. A friend of the court must report to the court or monitor reports made to the court on the amount of child support collected as a percentage of the amount ordered and on efforts to ensure compliance with orders relating to possession of or access to a child; and institute actions to enforce, clarify, or modify orders relating to child support or possession of or access to a child.

Family Code Sec. 202.003

If ordered by the court, the local domestic relations office, local registry, or court official designated to receive child support must report to the court or friend of the court on a monthly basis, any delinquency and arrearage in child support payments; and any violation of an order relating to possession of or access to a child.

Family Code Sec. 202.005

A friend of the court is entitled to compensation for services rendered and for expenses incurred in rendering the services. The court may assess the amount that the friend of the court receives in compensation against a party to the suit in the same manner as it awards court costs under Chapter 106, Family Code.

7. Uniform Interstate Family Support Act

The National Conference of Commissioners on State Laws adopted the Uniform Interstate Family Support Act (UIFSA) in 1996 to address the interstate enforcement and establishment of child support obligations. The Texas Legislature enacted UIFSA under Chapter 159 of the Family Code; all states had adopted the UIFSA by May of 1998.

In 2001, the National Conference of Commissioners on State Laws approved a number of changes to UIFSA. None of the changes affect the fundamental policies and procedures of the 1996 act, but they do clarify certain sections. The 78th Legislature [Regular Session] (2003) enacted these changes.

A UIFSA case involves the establishment, enforcement and modification of child support where the parents of the child live in different states. When a petition is received from a court, agency, or individual in another state, it is docketed as any other case. The petition must be accompanied by a copy of any known support order and must specify the relief sought. The petitioner is to be notified where and when the petition was filed. Citation should be served on the respondent as in other civil cases. The out-of-state petitioner may be represented by private counsel. The out-of-state petitioner may be provided services by a support enforcement agency or the Attorney General.

Family Code Sec. 159.305 Sec. 159.309 Sec. 159.311 Sec. 159.307 Sec. 159.308

When a UIFSA case is filed by a resident of the Clerk's county, the Clerk must forward it to the responding tribunal or appropriate enforcement agency in the responding state; or, if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that the case be forwarded to the appropriate tribunal and that receipt be acknowledged. The petition and its accompanying documents are to be forwarded to the responding tribunal or appropriate support enforcement agency in the responding state.

Family Code Sec. 159.304

If requested by the responding tribunal, a Texas tribunal must issue a certificate or other document as required by the laws of the other state. If the responding tribunal is in a foreign country, the Texas tribunal must specify the amount of support sought, convert that amount into the foreign currency, and provide any documents necessary to satisfy the requirements of the responding country.

8. Registration of Foreign Support Orders or Income Withholding Orders

- Letter of transmittal to the tribunal requesting registration and enforcement
- Two copies, including one certified copy, of the order to be registered, including any modification of an order
- A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage
- Name of the obligor and, if known:
  - Obligor's address and social security number
  - Name and address of the obligor's employer and any other source of income of the obligor
  - Description of and the location of property of the obligor in this state not exempt from execution
- Name of the obligee and, if applicable, the person to whom support payments are to be remitted

On receipt of a request for registration, the registering tribunal causes the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

Family Code Sec. 159.602(b)

If two or more orders are in effect, the person requesting registration must provide a copy of each support order and its accompanying documents, identify the controlling order, if there is one, and state the amount of any consolidated arrearages.

A request for a determination of which order controls may be filed separately from or with a request for registration. The person requesting registration must give notice of the request for each party whose rights may be affected by the determination.

Family Code Sec. 159.602(d) Sec. 159.602(e)

When a support order or income-withholding order issued in another state is registered, the Clerk of the registering tribunal notifies the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

Family Code Sec. 159.605(a)

The notice must inform the nonregistering party of all of the following:

Family Code Sec. 159.605(b)

- A registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.
- A hearing to contest the validity or enforcement of the registered order must be requested within 20 days.
- Failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages, and precludes further contest of that order with respect to any matter that could have been asserted.
- State the amount of any alleged arrearages.

If the registering party asserts that two or more orders are in effect, the notice must also do all of the following:

Family Code Sec. 159.605(c)

- Identify the orders, including the order alleged to be the controlling order, and the consolidated arrearages, if any.
- Notify the nonregistering party of the right to a determination of which order controls.
- State that the procedures provided in Family Code 159.605(b) apply to the determination of which order controls.
- State that failure to contest the validity or enforcement of the order alleged to be controlling may result in confirmation that the alleged controlling order does control.

On registration of an income-withholding order for enforcement, the Clerk of the registering tribunal must notify the obligor's employer under Chapter 158 of the Family Code.

Family Code Sec. 159.605(d)

A nonregistering party seeking to contest the validity or enforcement of a registered order in Texas must request a hearing within 20 days after notice of the registration. If the obligor does not so contest, the registered support order is confirmed, and is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

Family Code Sec. 159.606

9. Statewide Integrated System for Child Support and Medical Support Enforcement

The Title IV-D agency, in conjunction with other entities, develops and implement a statewide integrated system for child support and medical support enforcement to do the following:

Family Code Sec. 231.0011

- Unify child support registry functions.

- Record and track all child support orders entered in the state.
- Establish an automated enforcement process which will use delinquency monitoring, billing, and other enforcement techniques to ensure payment of current support.
- Incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding.
- Ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

Participation in the statewide integrated system for child support and medical support enforcement by a county is **voluntary**. *Family Code Sec. 231.0011(g)*

As a duty of office, the District Clerks serving counties and courts that participate in the statewide integrated system for child support and medical support enforcement must report monthly the information as may be required by the Office of Court Administration. This information must include the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Information necessary to complete the report and not directly within the control of the District Clerk, such as date of delinquency, will be provided to the Clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court. The monthly report must be transmitted to the Office of Court Administration no later than the 20th day of the month following the month reported, in such form as may be prescribed by the Office of Court Administration, which may include electronic data transfer. Copies of the monthly reports must be maintained in the office of the appropriate District Clerk for at least two years and must be available to the public for inspection and reproduction. *Gov't Code Sec 71.035(a)*

H. CHILD SUPPORT REVIEW PROCESS TO ESTABLISH OR ENFORCE SUPPORT OBLIGATIONS IN TITLE IV-D CASES

An administrative child support review process is authorized by statute to enable the Title IV-D agency to take expedited administrative actions to establish and enforce child support obligations and to determine parentage. A child support review order issued under Chapter 233, Family Code, and confirmed by the court constitutes an order of the court and is enforceable by any means available for enforcement of child support obligations under the law. *Family Code Sec. 233.001*

If the parties to a Title IV-D suit reach an agreement in their case, the Title IV-D agency files the agreed child-support review order and a waiver of service signed by the parties. If applicable, an acknowledgment of paternity or results of paternity testing and any other documentary evidence relied upon is filed with the agreed order. The agreed order is filed with the Clerk of court having continuing jurisdiction over the child who is the subject of the order, or if there is no such court, then with the Clerk of court having jurisdiction under this title. If a party timely files a motion for a new trial for reconsideration of an agreed review order and the court grants the motion, the agreed review order filed with the Clerk constitutes a sufficient pleading by the Title IV-D agency for relief on any issue addressed in the order. *Family Code Sec. 233.019* *SB 355 (82rd leg.)*

Upon filing of an agreed child support review order signed by all parties, together with waiver of service, the court must sign the order not later than the third day after its filing. It may be signed before it is filed, in which case the signed order must be filed immediately. The Title IV-D agency must immediately deliver a copy of *Family Code Sec. 233.024*

the signed agreed order to each party.

If the parties do not agree to the outcome of their case, the IV-D agency must file a petition for confirmation of a child support review order that has been issued by the agency. *Family Code Sec. 233.020*

A petition for confirmation of a child support review order not agreed to by the parties must include the final review order as an attachment to the petition and may include a waiver of service executed under Section 233.018(b) and an agreement to appear in court for a hearing. Documentary evidence relied on by the Title IV-D agency, including, if applicable, an acknowledgment of paternity or a written report of a parentage testing expert, must be filed with the Clerk as exhibits to the petition, but are not required to be served on the parties. The petition must identify the exhibits that are filed with the Clerk.

On the filing of an agreed child support review order or a petition for confirmation of a non-agreed order, the Clerk of the court must endorse on the order or petition the date and time the order or petition is filed. *Family Code Sec. 233.021(a)*

In an original action, the Clerk endorses the appropriate court and cause number on the agreed child support review order or on the petition for confirmation. *Family Code Sec. 233.021(b)*

The Clerk delivers by personal service a copy of the petition for confirmation of a non-agreed review order and a copy of the order, to each party entitled to service who has not waived service. *Family Code Sec. 233.021(c)*

A Clerk of a district court is entitled to collect in a child support review case the fees authorized in a Title IV-D case by Chapter 231, Title IV-D Services, Family Code. *Family Code Sec. 233.021(d)*

A court must consider any responsive pleading that is intended as an objection to confirmation of a child support review order not agreed to by the parties, including a general denial, as a request for a court hearing. *Family Code Sec. 233.022(a)*

The Title IV-D agency will do both of the following: *Family Code Sec. 233.022(b)*

- Make available to each Clerk of the court copies of the form to request a court hearing on a non-agreed review order.
- Provide the form to request a court hearing to a party to the child support review proceeding on request of the party.

The Clerk furnishes the form to a party to a child support review proceeding on the request of the party.

1. Authorized Costs and Fees in Title IV-D Cases

In a Title IV-D (child support or establishment) case, the Title IV-D agency pays the following: *Family Code Sec. 231.202*

- Filing fees and fees for issuance and service of process as provided by Chapter 110 of the Family Code and by Sections 51.317, 51.318(b)(2) and 51.319(2) of the Government Code.
- Fees for transfer as provided by Chapter 110, Family Code.
- Fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110, Family Code;

- The fee that sheriffs and constables are authorized to charge for serving process under Local Government Code Section 118.131 for each item of process to each individual on whom service is required, including service by certified or registered mail, to be paid to a sheriff, constable, or Clerk whenever service of process is required
- The fee for filing an administrative writ of withholding under Family Code Section 158.503(d) Note: The Office of the Attorney General Child Support Division has issued a statement indicating that the OAG will no longer file administrative writs of withholding pursuant to the amendment of Family Code Section 158.503 by HB 1674 (82nd Leg.).
- The fee for issuance of a subpoena as provided by Section 51.318(b)(1), Government Code
- A fee authorized by Section 72.031, Government Code for the electronic filing of documents with a Clerk

SB 355
HB 2302
(83rd Leg.)

Subchapter C, Chapter 231 of the Family Code does not affect, nor is it affected by, the exemption for state and certain federal agencies from bond for court costs or appeal provided by Section 6.001, Civil Practice and Remedies Code.

Family Code Sec. 231.203

Except as provided by Subchapter C, Chapter 231 of the Family Code, a District or County Clerk, sheriff, constable, or other government officer or employee may not charge the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IV-D case, including all of the following:

Family Code Sec. 231.204

- A fee payable to a District Clerk for performing services related to the estates of deceased persons or minors, certifying copies, or comparing copies to originals
- A court reporter fee, except as provided by Section 231.209, Family Code
- A judicial fund fee
- A fee for a child support registry, enforcement office, or domestic relations office
- A fee for alternative dispute resolution services
- A filing fee or other costs payable to a Clerk of an appellate court
- A statewide electronic filing system fund fee.

A District Clerk may not assess or collect fees for processing child support payments or for child support services from the Title IV-D agency, a managing conservator, or a possessory conservator in a Title IV-D case, except as provided by Subchapter C of Chapter 231 of the Family Code.

Family Code Sec. 231.206

To be entitled to reimbursement for court costs in Title IV-D cases, the Clerk of the court must submit one monthly billing for the Title IV-D agency. The monthly billing must be in the form and manner prescribed by the Title IV-D agency and approved by the Clerk.

Family Code Sec. 231.207

The Title IV-D agency and a qualified county may enter into a written agreement under which reimbursement for salaries and certain other actual costs incurred by the Clerk in Title IV-D cases is provided to the county. A county may not enter into an agreement for reimbursement under this section unless the Clerk providing service has at least two full-time employees each devoted exclusively to providing services in Title IV-D cases. Reimbursement made under this section is in lieu of all costs and fees provided by Chapter C, Chapter 231, Family Code.

Family Code Sec. 231.208

The Title IV-D agency must also pay the costs for the following:

Family Code Sec. 231.209

- The services of an official court reporter for the preparation of the reporter's record (formerly known as the statement of facts)
- The costs for the publication of citation served by publication
- Mileage or other reasonable travel costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage or other costs incurred by state employees in the General Appropriations Act

I. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

In 1999, the *Uniform Child Custody Jurisdiction Act* was replaced by the *Uniform Child Custody Jurisdiction and Enforcement Act* (UCCJEA), which took effect September 1, 1999. This law applies to an original Suit Affecting Parent-Child Relationships. Suits filed prior to September 1, 1999, are governed by the former law. Any suit filed on or after September 1, 1999, is governed by the new law.

Family Code Chapter 152

In short, the UCCJEA combines child custody jurisdiction and enforcement, and incorporates some standards from the federal Parental Kidnapping Prevention Act (PKPA). The UCCJEA revises the child custody jurisdiction law to prioritize home state jurisdiction. It also clarifies emergency jurisdiction and addresses a state's exclusive continuing jurisdiction in a child custody case. From the enforcement aspect, the UCCJEA is entirely new and implements a procedure for registering a child custody determination in another state and provides for a warrant to take physical possession of the child if a court believes that a custodial parent may flee or harm the child. The UCCJEA also establishes a role for public authorities in the enforcement process. What follows are some procedural aspects of the new UCCJEA that affects how a suit is processed.

1. Cooperation Between Courts and Preservation of Records

A court of this state may request the appropriate court of another state to:

Family Code Sec. 152.112

- Hold an evidentiary hearing.
- Order a person to produce or give evidence pursuant to procedures of that state.
- Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.
- Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

- Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

A court of this state must preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court must forward a certified copy of those records. Pursuant to SB 1490 (82nd Legislature) a record of all of the proceedings under this chapter relating to a child custody determination made in a foreign country or to the enforcement of an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction shall be made by a court reporter or as provided by Section 201.009.

2. Registration of Child Custody Determination

Family Code Sec. 152.305

A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state all of the following:

- A letter or other document requesting registration
- Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.
- Except as otherwise provided in Section 152.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered

On receipt of the documents required above, the registering court will do the following:

- Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.
- Serve notice upon the persons named and provide them with an opportunity to contest the registration in accordance with this section.

The notice required must state that:

- A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.
- A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice.
- Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court will

confirm the registered order unless the person contesting registration establishes one of the following:

- The issuing court did not have jurisdiction under Subchapter C of the UCCJEA.
- The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under this law.
- The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 152.108 of the Family Code.

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

3. Expedited Enforcement of Child Custody Determination

Family Code Sec. 152.308

A petition under the UCCJEA must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

Upon the filing of a petition, the court must issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court must hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

An order must state the time and place of the hearing and advise the respondent that at the hearing the court will award the petitioner immediate physical custody of the child and order the payment of fees, costs, and expenses under Section 152.312 of the Family Code.

4. Service of Petition and Order

Family Code Sec. 152.309

Except as otherwise provided by law, the petition and order must be served upon the respondent and any person who has physical custody of the child by any method authorized by the law of this state.

5. Costs, Fees, and Expenses

Family Code Sec. 152.312

The court will award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party. The expenses include costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Section 152.315 or 152.316 of the Family Code.

Family Code Sec. 152.317

J. PROTECTION OF THE FAMILY

1. Application for Protective Order

An application for a protective order may be filed in the county where the applicant resides, the county where the respondent resides, or any county in which the family violence is alleged to have occurred. A fee cannot be required of the applicant.

Family Code Sec. 82.003 Sec. 81.002 SB 129 (83rd Leg.)

The application must state:

Family Code Sec. 82.004

- Name and county of residence of each applicant
- Name and county of residence of each person alleged to have committed family violence
- The relationship(s) between the applicant(s) and the person(s) alleged to have committed family violence
- A request for one or more protective orders
- Whether an applicant is receiving services from the Title IV-D agency in connection with a child support case and, if known, the agency case number for each open case.

SB 355 (83rd Leg.)

The Family Code definition of "dating violence" has been expanded by SB 116 (82nd Legislature) to include acts committed against an individual who is the new spouse or dating partner of the perpetrator's former spouse or dating partner and authorizes such a victim to file an application for a protective order. SB 116 is known as the Kristy Appleby Act in memory of Kristy Appleby who was shot and killed in the office where she worked by the ex-wife of the man she had been dating. She was unable to get a protective order against the woman because of the limitations of the prior definition of "dating violence."

An adult member of the family or household may file an application for a protective order under Section 71.004(1) or (2) of the Family Code to protect the applicant or any member of the applicant's family or household. A member of the dating relationship may file for a protective order to protect the applicant under Section 71.004(3) regardless of whether the member is an adult or a child. Any adult may apply for a protective order to protect a child from family violence.

Family Code Sec. 82.002

SB 819 (82nd Leg.)

In addition, a prosecuting attorney or the Department of Family and Protective Services may file an application for the protection of any person alleged to be a victim of family violence.

Family Code Sec. 82.002(d)

The person alleged to be the victim of family violence in an application filed under 82.002(c) or 82.002(d) of the Family Code is considered to be the applicant for the protective order.

Family Code Sec. 82.002(e)

If the applicant is a former spouse, a copy of the divorce decree must be attached to the application or filed with the court before the hearing. If the application is for the protection of a child, or a child is alleged to have committed the violence, and the child

Family Code Sec. 82.006 FamilyCode Sec. 82.007

is subject to the continuing jurisdiction of a court, a copy of all court orders affecting the child must be attached to the application or filed with the court before the hearing.

A respondent to an application who wishes to apply for a protective order must file a separate application. If a protective order applies to both parties, the court must issue separate documents that reflect the appropriate conditions for each party.

Family Code Sec. 82.022 Sec. 85.003

An application requesting a temporary ex parte order must contain full details of the allegations and be signed under oath by the applicant. If the court finds a clear and present danger of family violence, it may enter a temporary ex parte order without hearing. The order is valid for the period specified in the order, not to exceed 20 days, and may be extended for additional 20-day periods. The court may dispense with the necessity of a bond for a temporary ex parte order.

Family Code Sec. 82.009 Sec. 83.001 Sec. 83.002 Sec. 83.003

An application for a protective order that is filed after a previously rendered protective order has expired must include a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application. It must also contain a description of either:

Family Code Sec. 82.008

- The violation of the expired protective order, if the application alleges that the respondent violated the expired protective order by committing an act prohibited by that order before the order expired
- The threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault

If a violation of the expired order is alleged, it must also contain a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under this law.

2. Application Filed Before Expiration of Previously Rendered Protective Order

If an application for a protective order alleges that an unexpired protective order applicable to the respondent is due to expire not later than the 30th day after the date the application was filed, the application for the subsequent protective order must include a copy of the previously rendered protective order attached to the application or, if a copy of the previously rendered protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application. It must also include a description of the threatened harm that reasonably places the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

Family Code Sec. 82.0085

The procedural requirements for an original application for a protective order apply to a protective order requested under this section.

3. Duration of Protective Order

Except as provided otherwise, an order under this law is effective for the period stated in the order, not to exceed two years, or if a period is not stated in the order, until the second anniversary of the date the order was issued. SB 789 (82nd Legislature) amended Section 85.025 of the Family Code to authorize a court to render a protective order that is effective for a period that exceeds two years in certain cases involving serious bodily injury or repeat acts of family violence.

Family Code Sec. 85.025

A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. After a hearing on the motion, if the court finds there is a continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. If the court finds there is no continuing need for the protective order, the court will order that the protective order expires on a date set by the court. A person who is the subject of a protective order that is effective for a period that exceeds two years may file a subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. This subsequent motion may be filed not earlier than the first anniversary of the date on which the court rendered an order on a previous motion for the court to review the protective order and determine whether there was a continuing need for the protective order. After a hearing on the motion, if the court does not make a finding that there is no continuing need for the protective order, the protective order remains in effect until the date the order expires. Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order.

SB 789 (82nd Leg.)

If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

If an applicant is the party to a pending divorce action, see section A, Dissolution, subsection 6, earlier in this chapter.

4. Service of Notice of Application for Protective Order

Each respondent to an application for protective order is entitled to service of notice of an application for a protective order when an application for the protective order is filed. The Clerk issues a notice of an application for a protective order and delivers the notice as directed by the applicant. Upon request, the Clerk issues a separate or additional notice. HB 2624 (82nd Legislature) amends the Family Code and Code of Criminal Procedure to establish additional notice procedures applicable to circumstances involving family violence or other criminal conduct by a person who is a member of the state military forces or who is serving in the United States armed forces in an active-duty status.

Family Code Sec. 82.043
Sec. 82.042

Family Code Section 82.042

CCP Article 42.0182

A notice of an application for a protective order must:

Family Code Sec. 82.041(a)

- Be styled "The State of Texas."
- Be signed by the Clerk under seal of court.
- Contain the name and location of the court.
- Show the date of filing of the application.
- Show the date of issuance of the notice of the application for protective order.
- Show the date, time and place of the hearing.
- Show the file number.
- Show the name of each applicant and each person alleged to have committed family violence.
- Be directed to each person alleged to have committed family violence.
- Show the name and address of the attorney for the applicant or the

mailing address of the applicant if the applicant is not represented by an attorney.

- Contain the address of the Clerk.

The notice of an application for a protective order must state: *Family Code Sec. 82.041(b)*

"An application for a protective order has been filed in the court stated in this notice alleging that you have committed family violence. You may employ an attorney to defend yourself against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, a default judgment may be taken and a protective order may be issued against you."

An applicant for a protective order must furnish the Clerk with a sufficient number of copies of the application for service on each respondent. *Family Code Sec. 82.043(b)*

A notice of an application for a protective order must be served in the same manner as a citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized. *Family Code Sec. 82.043(c)*

Service of notice of an application for protective order is not required before the issuance of a temporary ex parte order under Chapter 83 of the Family Code. *Family Code Sec. 82.043(d)*

A respondent served with notice of an application for a protective order may, but is not required to, file an answer any time before a hearing. *Family Code Sec. 82.021*

5. Fees and Costs

An applicant for a protective order or an attorney representing an applicant may not be assessed any fee, cost, charge, or expense by a Clerk of the court, a sheriff, constable, or other public official or employee in connection with the filing, serving, or entering of the protective order. An applicant may not be charged a fee to dismiss, modify, or withdraw a protective order, and may not be charged a fee for certifying copies, comparing copies to originals, transferring a protective order, or for any other service. *Family Code Sec. 81.002*

Except on a showing of good cause or indigency, a court must require in a protective order that the party against whom an order is rendered pay the protective order fee of $16, the standard fees charged by the Clerk of the court as in a general civil proceeding for the cost of service of the order, the costs of court, and all other fees, charges, or expenses incurred in connection with the protective order. *Family Code Sec. 81.003*

A party who is ordered to pay fees and costs who does not pay before the date specified by the order may be punished for contempt of court. If a date is not specified by the court, payment of costs is required before the 60th day after the date the order was rendered. *Family Code Sec. 81.004*

The court may assess a reasonable attorney's fee as compensation for the services of a private or prosecuting attorney or an attorney employed by the Department of Protective and Regulatory Services representing an applicant against the party who is found to have committed family violence or a party against whom an agreed protective order is rendered. In setting the amount of the fee, the court must consider the income and ability to pay of the person against whom the fee is assessed. *Family Code Sec. 81.005*

The amount of such fees collected as compensation for the fees of a prosecuting attorney will be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented and the fees collected as compensation for an attorney employed by the Department of Protective and Regulatory Services shall be deposited in the general revenue fund to the credit of the Department of Protective and Regulatory Services. The fees collected as compensation for a private attorney shall be paid to the private attorney, who may enforce the order in the attorney's own name.

Family Code Sec. 81.006

6. Hearing

The court must set a date and time for the hearing on the application not later than 14 days after it is filed, unless a later date is requested by the applicant. On the request of a prosecuting attorney in a county with a population of more than 2 million or in a county in a judicial district that is composed of more than one county, the court must set the hearing not later than 20 days after the application is filed.

Family Code Sec. 84.001
Family Code Sec. 84.002
HB 2702 (82nd Leg.)

If the notice is received by a respondent within 48 hours prior to the hearing, the court may reschedule the hearing, but additional service on a rescheduled hearing is not required.

Family Code Sec. 84.004

If a proceeding for which a legislative continuance is sought under Section 30.003, Civil Practice and Remedies Code, includes an application for a protective order, the continuance is discretionary with the court.

Family Code Sec. 84.005

7. Appeal

A protective order may be appealed. However, a protective order rendered in a suit for dissolution of marriage may not be appealed until the final decree becomes a final, appealable order. A protective order rendered in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support, possession of or access to the child becomes a final, appealable order.

Family Code Sec. 81.009

8. Confidentiality of Certain Information

On request of the person or a member of the family or household of the person protected by the order, the court may exclude from the protective order the address and telephone number of any of the following:

Family Code Sec. 85.007(a)

- A person protected by the order, specifying only the county of residence
- The place of employment or business of a person protected by the order
- The child-care facility or school where a child protected by the order resides or attends

On granting a request for confidentiality, the court must order the Clerk to strike the information described above from the public records, and to maintain a confidential record of this information for use only by the court.

Family Code Sec. 85.007(b)

If the above information is not confidential, the person protected by the order may file a notification of change of address or telephone number with the court that rendered the order to modify the information contained in the order. The Clerk shall attach the notification of change to the protective order and delivery a copy of the notification to the respondent by registered or certified mail. The filing of a change of address or telephone number does not affect the validity of the order.

Family Code Sec. 87.004

9. Warning on Protective Order

Each protective order issued under Title 4 of the Family Code, including a temporary ex parte order, must contain the following prominently displayed statements in bold-faced type, capital letters, or underlined: *Family Code Sec. 85.026*

> **"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.**
>
> **"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.**
>
> **"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."**
>
> ***SB 819 (82nd Leg.)***
>
> **"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."**

10. Copies of Orders

A protective order must be delivered to the respondent in accordance with Rule 21a, Texas Rules of Civil Procedure, served in the same manner as a writ of injunction, or served in open court at the close of the hearing. *Family Code Sec. 85.041*

If the order is served in open court, the order must be served as follows. If the respondent is present at the hearing and the order has been reduced to writing, the judge or master signs the order and gives a copy of the order to the respondent. A certified copy of the signed order is given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the Clerk of the court must mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

If the respondent is present at the hearing but the order has not been reduced to writing, the judge or master must give notice orally to the respondent of the part of the order that contains prohibitions under Section 85.022 of the Family Code or any other

part of the order that contains provisions necessary to prevent further family violence. The Clerk of the court will mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the Clerk of the court must immediately provide a certified copy of the order to the applicant and mail a copy of the order to the respondent not later than the third business day after the date the hearing is concluded.

Family Code Sec. 85.042(a)

The Clerk of the court issuing an original or modified protective order must send a copy of the order along with the information provided by the applicant that is required under Section 411.042(b)(6), Government Code, to the Department of Public Safety on the date the order is issued and to the chief of police of the city where the person protected by the order resides, if the person resides in a city, or to the appropriate constable and the sheriff of the county where the person resides, if the person does not reside in a city, and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency.

SB 355 (83rd Leg.)

HB 1435 (83rd Leg.)

HB 2624 (82nd Legislature) amends Section 85.042, Family Code, by adding Subsection (a-1) and by amending Subsections (c) and (d). Subsection (a-1) was amended in 2013 to make the requirement for the Clerk of a court issuing a protective order against military personnel to provide a copy of the order to specified military authorities conditional on the applicant or the applicant's attorney providing to the Clerk the mailing address of the staff judge advocate or provost marshal, as applicable. Subsection (a-1) applies only if the respondent, at the time of issuance of an original or modified protective order under this subtitle, is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status. In such a case, the Clerk of the court must, in addition to complying with Subsection (a), also provide a copy of the protective order and the information described by that subsection to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned (provided the address is provided to the Clerk by the applicant or applicant's attorney) with the intent that the commanding officer will be notified, as applicable. The amendments to Subsections (c) and (d) require the Clerk of a court that vacates an original or modified protective order under this subtitle to notify each individual or entity who received a copy of the original or modified order from the Clerk under this section that the order is vacated and require the applicant or the applicant's attorney to provide to the Clerk of the court the name and address of each law enforcement agency, child-care facility, school, and other individual or entity to which the Clerk is required to mail a copy of the order.

HB 2624 also amends Chapter 42 of the Code of Criminal Procedure by adding Article 42.0182, entitled "Notice Of Family Violence Offenses Provided By Clerk Of Court." This article applies only to conviction or deferred adjudication granted on the basis of an offense that constitutes family violence, as defined by Section 71.004, Family Code, or an offense under Title 5, Penal Code, and if the defendant is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status. When this article is applicable, as soon as possible after the date on which the defendant is convicted or granted deferred adjudication on the basis of an offense, the Clerk of the court in which the conviction or deferred adjudication is entered shall provide written notice of the conviction or deferred adjudication to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the defendant is assigned with the intent that the commanding

officer will be notified, as applicable.

If a protective order prohibits a respondent from going to or near a child-care facility or school, the Clerk of the court must send a copy of the order to the child care facility or school.

Family Code Sec. 85.042(b)

The Clerk of a court vacating an original or modified protective order must notify each individual or entity who received a copy of the original or modified order that the order is vacated. The applicant or the applicant's attorney must provide to the Clerk the name and address of each law enforcement agency, child-care facility, school, or other individual or entity to which the Clerk is required to mail a copy, and any other information required under Section 411.042(b)(6), Government Code.

Family Code Sec. 85.042(c)

Family Code Sec. 85.042(d)

HB 2624 (82nd leg.)

The Clerk of the court issuing an original or modified protective order under Section 85.022 that suspends a license to carry a concealed handgun will send a copy of the order to the Department of Public Safety at its Austin headquarters: 5805 North Lamar, Austin, Texas 78752. On receipt of the order suspending the license, the department will: Record the suspension of the license in the records of the department; report the suspension to the local law enforcement agencies, as appropriate; and demand surrender of the suspended license from the license holder.

Family Code Sec. 85.042(e)

11. Duty to Enter Information into Statewide Law Enforcement Information System

On receipt of an original or modified protective order from the Clerk of the issuing court, a law enforcement agency must immediately, and not later than the 10th day after the date the order is received, enter the information required by Section 411.042(b) (6) of the Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

Family Code Sec. 86.0011

CHAPTER 11

JUVENILE LAW

A. INTRODUCTION

The Juvenile Justice Code (Title 3, Chapters 51-61, Family Code) is the basis for juvenile law in Texas. One of its primary purposes is to provide a simple judicial procedure through which the provisions of Title 3 are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Family Code Sec. 51.01(6)

The provisions of the Juvenile Justice Code apply to children. For purposes of the code, a child is defined as a person who is

Family Code Sec. 51.02(2)

- 10 years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

While not subject to the jurisdiction of the juvenile courts, children as young as 7 may be provided with early intervention services by the Texas Department of Family and Protective Services.

Family Code Sec. 264.302

It is important to note that married persons under the age of 18 are still subject to the provisions of the Juvenile Justice Code. The statutory definition makes no provision for married persons, and the Attorney General has stated that all rules and procedures must be followed for married as well as unmarried persons subject to the Juvenile Justice Code.

AG Op. MW-298 (1981)

1. Courts Hearing Juvenile Cases

The juvenile court of a county, as designated by the county's juvenile board, has jurisdiction for cases dealing with juvenile delinquents. The juvenile court may be a district court, county court, or county court at law. If the county court is designated as a juvenile court, at least one other court shall be designated as the juvenile court. If the judge of a court is not an attorney licensed in this state, an alternate court (the judge of which is an attorney licensed in this state) shall be designated. In 2013, Senate Bill 92 amended Section 51.04 to allow a court that has jurisdiction over proceedings under Title 5 to be designated by the county juvenile board as a juvenile court. There must at all times be at least one juvenile court designated for each county.

Family Code Sec. 51.04
SB 92 (83rd Leg.)

2. Jurisdiction

Generally speaking, juvenile courts have original jurisdiction over all alleged offenders under the age of 18. However, there are four situations in which a criminal court, not a juvenile court, has jurisdiction even though the offender is under 18: perjury, traffic violations, violation of statutes or ordinances punishable by fines only, and alcohol violations. These will be discussed in more detail in Section C, Transferring to Other Courts.

Family Code Sec. 51.04

B. PROCEEDINGS

Before proceedings commence, two determinations must be made:

Family Code Sec. 51.02(2)

- that the person referred to juvenile court is a "child" as defined in the Family Code; and
- that there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision.

Family Code Sec. 51.03(a),(b)

Next, the type of conduct in which the child engaged must be determined: delinquent conduct or conduct indicating a need for supervision. A child adjudicated of delinquent conduct can be placed on probation or, if certain conditions are met, be committed to the Texas Youth Commission or Texas Juvenile Justice Department. A child adjudicated for conduct indicating a need for supervision cannot be committed to the Texas Juvenile Justice Department. Delinquent conduct and conduct indicating a need for supervision are defined in Sections 51.03(a) and 51.03(b), respectively, of the Family Code. Two bills from the 82nd Legislature amended Section 51.03(b), Family Code. Both bills added Section 51.03(b)(7). However, the bills add different versions of 51.03(b)(7). Since the sections are not irreconcilable, both will be in effect. Both are adding a category of conduct which would indicate a need for supervision. SB 407 adds conduct that violates Section 43.261, Penal Code. HB 2015 adds 51.03(b)(7) which provides that "notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) (1) or (2), Penal Code."

SB 407 (82nd Leg.)

HB 2015 (82nd Leg.)

SB 1489 (82nd Leg.

Family Code Section 51.03 was further amended by SB 1489, which adds Subsection (e-1) to the statute. Subsection (e-1) provides that notwithstanding any other law, for purposes of conduct described by Subsection (b) (2), "child" means a person who is 10 years of age or older, is alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age, and who is required to attend school under Section 25.085, Education Code.

SB 1093 & HB 2862 (83rd Leg.))

In 2013 Family Code Section 51.03 was amended by SB 1093 and by HB 2862 To add subsection (b)(8). This new subsection provides that notwithstanding Subsection (a)(1), conduct that violates Section 43.261, Penal Code qualifies as conduct indicating a need for supervision.

Cases for delinquent conduct and conduct indicating a need for supervision require separate handling from criminal cases. The Clerk reserves a special judge's docket, file docket, index, minutes, and case jacket file for juvenile cases.

Procedures for filing and issuance of processes in juvenile cases are as follows:

- The prosecuting attorney files with the Clerk a petition for an adjudication or transfer hearing. The petition must state the time, place and manner of the acts alleged and the penal law or standard of conduct allegedly violated by the acts.

Family Code Sec. 53.04

- The Clerk issues a summons with a copy of the petition attached to the child and to the child's parent, guardian, or custodian to advise them of the charge and the hearing date.

Family Code Sec. 53.06

- The court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. The juvenile court may issue a writ of attachment for a person who violates this order. The writ of attachment is executed in the same manner as in a criminal proceeding.

Family Code Sec. 53.06
Family Code Sec. 53.08

If the child is taken into custody prior to the hearing on the petition, the intake officer must immediately investigate and determine if detention is warranted. The child can be detained only if: *Family Code Sec. 53.02*

- the child is likely to abscond or be removed from the jurisdiction of the court;
- the child is not being adequately cared for and supervised;
- there is no adult to ensure the child's appearance in court;
- the child is a danger to him/herself or others; or
- the child has previously been found to be delinquent or has previously been convicted of a penal offense punishable by a term in jail.

Detention is mandatory if the child used, possessed or exhibited a firearm during the commission of the offense. *Family Code Sec. 53.02(f)*

If the child is not released, an informal detention hearing is held pursuant to the provisions of Chapter 54, Family Code. The child must be released unless one of the above conditions exist. Any release, whether before or after a detention hearing, is conditioned upon the responsible adult agreeing to produce the child for the adjudication hearing. *Family Code Sec. 54.01*

The next step in the process is an adjudication hearing. A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing. *Family Code Sec. 54.03(a)*

The adjudication hearing is conducted as a trial by jury, unless a jury is waived under section 51.09 of the Family Code. If the hearing is on a charge approved by the grand jury, the jury must consist of 12 persons and be selected in accordance with the requirements in criminal cases. If the hearing is on a charge classified as a misdemeanor, the jury must consist of 6 persons. The jury's verdict must be unanimous. *Family Code Sec. 54.03(c)*

If the court or jury finds the child did not engage in delinquent conduct or conduct indicating a need for supervision, the case is dismissed with prejudice. If an affirmative finding is made, the court sets a date for a disposition hearing. *Family Code Sec. 54.03(g), (h)*

The final hearing held in a juvenile case is the disposition hearing. This hearing is separate and distinct from, and must be held subsequent to, the adjudication hearing. Generally, there is no right to a jury at the disposition hearing. *Family Code Sec. 54.04(a)*

No disposition may be made unless the child is in need of rehabilitation, or the protection of the public or the child requires that disposition be made. In 2013 Family Code Section 54.04 was amended by HB 2862 and by Senate Bill 511. SB 511 amended Subsections (d) and (q) and added Subsection (z) HB 2862 changed the deadline for a court to provide the attorney for a child in a disposition hearing or in a hearing to modify a disposition with access to all written matter to be considered by the court. The bill also authorizes a court, if the court or jury makes the finding necessary for the court to make a disposition in a case, to place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standard for the facility. No disposition placing the child on probation outside the child's home may be made unless the court finds the child's home to be inadequate to enable the child to fulfill the conditions of probation. Potential dispositions are listed in Section 54.04(d). Special probation conditions apply when the child has violated Section 28.03 or Section 42.08 of the Penal Code. *Family Code Sec. 54.04(c & d)* *Family Code Sec. 54.049*

A juvenile probation officer shall refer a child with a mental illness or mental retardation to an appropriate local authority at least three months before the term of probation is to be completed. A referral is not needed if the child is already receiving treatment from a mental health or mental retardation authority in the county in which the child resides.

Family Code Sec. 54.0408

At the conclusion of the disposition hearing, the court must inform the child of his or her right to appeal, and the procedures for sealing records. Sealing of records is covered in detail in section D of this chapter.

Family Code Sec. 54.04(h)

1. Fees

If a disposition hearing is held, and the court finds the child, parent, or other person responsible for the child is financially able to pay the fee, a fee of $20 is to be charged as costs of court. This fee is paid into the state Juvenile Probation Diversion Fund.

Family Code Sec. 54.0411(a)

If a child is placed on probation, the juvenile court may charge a fee of not more than $15 a month during a child's probation. If the court finds that a child, parent, or other party financially responsible for the child's support is financially unable to pay the probation fee, the court shall enter into the records of the child's case a statement of that finding. The court may waive this fee only if the court makes this finding.

Family Code Sec. 54.061

A "juvenile delinquency prevention fee" applies when a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code (Graffiti). The juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court a $50 juvenile delinquency prevention fee as a cost of court. The court shall deposit fees received under this law to the credit of the county graffiti eradication fund provided for under Article 102.0171, Code of Criminal Procedure. If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the juvenile delinquency prevention fee, the court shall enter into the child's case records a statement of that finding. If the court finds and documents that the person responsible for this fee is unable to pay, the court may waive the fee.

Family Code Sec. 54.0461

The juvenile court may order the parent or other person responsible for the support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Family Code Section 51.10, subsection (f) or (g). Payment may be ordered for each attorney who represented the child at any hearing, and may include amounts paid to or on behalf of the attorney by the county for preparation time, investigative costs and expert witness costs. However, the court may not order payments that exceed the financial ability of the parent or other responsible person to meet the payment schedule set by the court.

Family Code Sec. 51.10(k),(l)

If a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required under Section 54.0409 or other law, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court: (1) a $50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission; and, (2) a $34 fee if the disposition of the case does not include a commitment and the child is required to submit a DNA sample under Section 54.0409 or other law.

Family Code Sec. 54.0462

The Clerk shall transfer to the Comptroller any funds received under Section 54.0462 and the Comptroller shall credit the funds to the Department of Public Safety to

help defray the cost of any analyses performed on DNA samples provided by children subject to this section.

The court may waive a fee under Section 54.062, but only if the court enters into the child's case records a statement of having made a finding that the child, parent, or other person responsible for the child's support is unable to pay the fee.

C. TRANSFERRING TO OTHER COURTS

1. Mandatory Transfers

Depending on the nature of the case, the juvenile court may waive its exclusive original jurisdiction and transfer a child to another court.

In some cases, transfer to a district court or criminal district court (if such courts exist in the child's county) is mandatory. Transfer is mandatory if the child is alleged to have committed a felony and the child has previously been transferred to a district or criminal district court, unless, in the matter previously transferred,

Family Code Sec. 54.02(m)

- the child was not indicted by a grand jury;
- the child was found not guilty;
- the matter was dismissed with prejudice; or
- the child was convicted, the matter was reversed on appeal, and the appeal is final.

When transfer is mandatory, the required summons must provide notice that the purpose of the hearing is to consider mandatory transfer to criminal court. Likewise, the study which must be conducted in discretionary transfers is not required in mandatory transfers.

Family Code Sec. 54.02(n)

2. Discretionary Transfers

At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision**.**

Family Code Sec. 54.02(e)

The juvenile court may waive its original exclusive jurisdiction and transfer a matter to a district court for regular criminal proceedings if the child is alleged to have committed particular felonies at certain ages, no adjudication hearing has been conducted, and the court determines there is probable cause to believe the child committed the offense and that because of the seriousness of the offense or the background of the child or the welfare of the community criminal proceedings are required. The petition and notice requirements of Sections 53.04, 53.05, 53.06 and 53.07 (*see*, Proceedings, this chapter) must be met, and the summons must state that the purpose of the hearing is to consider a discretionary transfer to criminal court.

Family Code Sec. 54.02(a)

The court shall conduct a hearing without a jury to consider the transfer of the proceedings to district court. Prior to the hearing, the court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his or her circumstances, and the circumstances of the alleged offense.

Family Code Sec. 54.02(c),(d)

If the petition alleges multiple offenses that constitute more than one criminal transaction, the court must either retain or transfer all offenses relating to a single

Family Code Sec. 54.02(g)

transaction. A child cannot be subject to criminal prosecution at any time for any offense arising out of a transaction for which the juvenile court maintains jurisdiction, except as provided by Subsection (g-1), Section 54.02, Family Code. This is a new Subsection which was added by S.B. 1617(82nd Legislature). The new Subsection (g-1) provides that a child may be subject to criminal prosecution for an offense committee under Chapter 19 or Section 49.08, Penal Code, if the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction, and if on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or Section 49.08, Penal Code, had not occurred.

Family Code Sec. 54.02(g-1)

In its order transferring the case to a criminal court, the juvenile court must state its reasons for waiver and certify its action. Upon transfer, the child is dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Section 152.0015, Human Resources Code, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Article 4.19, Code of Criminal Procedure. If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses. A transfer of custody made under this subsection is an arrest. Once the matter is transferred, the criminal court may not remand the child to the jurisdiction of the juvenile court.

Family Code Sec. 54.02(h),(i)

SB 1209 (82nd Leg.)

Family Code Sec. 54.02 (h-1)
HB 2862 (83rd Leg.)

3. Transfer to Constitutional County Court, Municipal Court or Justice Court - Truancy

The juvenile court may waive its exclusive original jurisdiction if the child is 12 years of age or older in the failure-to-attend-school cases as mentioned in Section 51.03(b)(2). These matters may be transferred to a constitutional county court, if the county has a population of 1.75 million or more, or to a municipal court or justice court. The juvenile court must have permission from the court to which the matter is being transferred before the transfer is made. The juvenile court's waiver may be for an individual case or may be for all such cases. A waiver of jurisdiction for all such cases is effective for one year.

Family Code Sec. 54.021

HB 1489 (82nd Leg.)

HB 734 (82nd Leg.)

Constitutional county, justice and municipal courts may also exercise jurisdiction if the child is 12 years of age or older in matters indicating a need for supervision if the juvenile court has waived its jurisdiction, and a complaint is filed under Section 25.094 of the Education Code. Costs assessed in a matter transferred to a constitutional county court under Education Code Section 25.093 or 25.094 must be the same as those for a case filed in justice court. If the case is before a constitutional county court, recording proceedings are the same as those in a municipal court of record.

Education Code Sec. 25.094

Family Code Sec. 54.021(d) and (e)

Municipal and justice courts have jurisdiction over juveniles in certain misdemeanor cases. No transfer from the juvenile court is necessary. An order under Article 45.057 is enforceable by contempt (*see*, Article 45.050).

CCP Art. 4.11 Art. 4.14 Art. 45.050 Art. 45.057

D. RECORDS

1. Confidentiality

Records and files concerning a child, including personally identifiable information and information obtained for the purpose of diagnosis, examination, evaluation, or

Family Code Sec. 58.005

treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

- the professional staff or consultants of the agency or institution;
- the judge, probation officers, and professional staff of consultants of the juvenile court;
- an attorney for the child;
- a governmental agency if the disclosure is required or authorized by law;
- a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
- any person, agency, or institution having a legitimate interest in the proceeding or in the work of the court, with the juvenile court's permission.

The disclosure of information provisions discussed above do not apply to information collected for the Juvenile Justice Information System under Section 58.104 of the Family Code, which is discussed in section E below.

2. Sealing the Records

It should be noted that SB 407 and HB 2015 (82nd Legislature) both included changes to Section 58.003, Family Code. The bills both amend the section by adding Subsections (c-3) and (c-4) and by amending Subsection (d). However, the changes by each bill are NOT the same and both will be in effect.

Family Code Sec. 58.003(a), (b), (p)

The records of a child who has been found to have engaged in delinquent conduct or to have engaged in conduct indicating a need for supervision (or who has been taken into custody to determine whether the child has engaged in delinquent conduct or conduct indicating a need for supervision), may be sealed. Generally, the child must submit an application to the court requesting that the records be sealed. But a judge can act on his or her own motion. Two years must have elapsed since the child's final discharge, and the child may not have engaged in any further delinquent conduct, conduct indicating a need for supervision, nor have been convicted of a felony or misdemeanor involving moral turpitude. The court may NOT order the records sealed if the person has received a determinate sentence for engaging in delinquent conduct that violated a penal law enumerated in Family Code Section 53.045 or engaging in habitual felony conduct as described in Section 51.031.

Family Code Sec. 58.003(c) HB 961 (82nd Leg.)

The records of a person adjudicated as having engaged in delinquent conduct that constituted a felony may only be sealed if the person is 19 or older; the person was not transferred to a criminal court, the records have not been used as evidence in the punishment phase of a criminal proceeding, and the person has not been convicted of a felony after becoming age 17.

The court shall hold a hearing before sealing a person's records under Family Code, Section 58.003(a) or (c) unless the applicant waives the right to a hearing in writing and the court and the prosecuting attorney for the juvenile court consent.

Family Code Sec. 58.003(e)

Notwithstanding Family Code, Section 58.003, Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision that violated a penal law of the grade of misdemeanor or felony if the child successfully completed an educational program described by Section 37.218, Education Code, or another equivalent education program. The court may: (1) order the sealing of the records immediately and without a hearing; or (2) hold a hearing to determine whether to seal the records.

Family Code Sec. 58.003 (c-1)

If the court orders the sealing of a child's records under Subsection (c-1), a prosecuting attorney or juvenile probation department may maintain until the child's 17th birthday a separate record of the child's name and date of birth and the date the child successfully completed the drug court program. The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

Family Code Sec. 58.003(c-2)

In 2013 five bills were passed which amended some portion of Section 58.003. These bills are HB 2862, SB 92, SB 1093, SB 462, and SB 1093. The bills add subsections (c-7) and (c-8) which allow for the sealing of records in cases where the child successfully completes the Human Trafficking Program.

HB 2862, SB92, SB 1093, SB462, SB 1093 (83rd Leg.)

The court may grant the relief authorized in Subsection (a), (c-1), or (c-3) at any time after final discharge of the child or after the last official action in the case if there was no adjudication, subject to Subsection (e), if that subsection is applicable. If the child is found to be not guilty at the adjudication hearing, the court shall immediately and without any additional hearing order the records sealed.

Family Code Sec. 58.003(d)

A hearing shall be held on the motion to seal the records unless the applicant waives the right to a hearing in writing and the court and the juvenile court's prosecuting attorney give their consent. Proper notice must be given to the person making application or who is the subject of the records; the prosecuting attorney; the authority granting discharge if final discharge was from an institution or parole; any public or private agency or institution having records; and the law enforcement agency having custody of files named in the application or motion. A copy of the sealing order must be sent to each agency or official named in the order.

Family Code Sec. 58.003(e)(f)

On entry of an order sealing the records in a juvenile case:

Family Code Sec. 58.003(g)

- all law enforcement, prosecuting attorney, Clerk of court, and juvenile court records ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;
- all records of a public or private agency or institution ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;
- all index references to the records ordered sealed shall be deleted before the 61st day after the date the order is received and verification of the deletion shall be sent before the 61st day after the date of the deletion to the court issuing the order;

- the juvenile court, Clerk of court, prosecuting attorney, public or private agency or institution, and law enforcement officers and agencies shall properly reply that no record exists with respect to the person on inquiry in any matter; and
- the adjudication shall be vacated and the proceeding dismissed and treated for all purposes other than a subsequent capital prosecution, including the purpose of showing a prior finding of delinquent conduct, as if it had never occurred.

Family Code Sec. 58.003(g-1) HB 2862 (83rdLeg.)

Statistical data collected or maintained by the Texas Juvenile Justice Department, including statistical data submitted under Section 221.007 of the Human Resources Code, is NOT subject to a sealing order issued under Section 54.003.

Family Code Sec. 58.003(h)

Inspection of the sealed records may be permitted by an order of the juvenile court on the petition of the person who is the subject of the records and only by those persons named in the order.

Family Code Sec. 58.003(l)

On the motion of a person in whose name records are kept or on the court's own motion, the court may order the destruction of records that have been sealed if the records relate to conduct that did not violate a penal law of the grade of felony or a misdemeanor punishable by confinement in jail; five years have elapsed since the person's 16th birthday, and the person has not been convicted of a felony.

Family Code Sec. 58.003(n)

A record created or maintained under Chapter 62, Code of Criminal Procedure (sex offender registration records) may not be sealed if the person has a continuing duty to register under that chapter.

Family Code Sec. 58.003(o)

An agency or official named in the order that cannot seal the records because the information required under Family Code 58.003(p) is incorrect or insufficient shall notify the court issuing the order before the 61st day after the date the agency or official receives the order. The court shall notify the person who made the application or who is the subject of the records named in the motion, or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records because there is incorrect or insufficient information in the order.

Family Code Sec, 58.003(p)

The application to seal records is filed in a juvenile court in the county in which the proceedings occurred. The application and the order sealing the records must include the following information, or an explanation of why the information is not included.

- The applicant's full name, sex, race or ethnicity, date of birth, driver's license or identification card number and social security number
- the offense charged
- the date on which the offense was alleged to have been committed
- the county in which the offense was alleged to have been committed
- if a petition was filed in juvenile court, the cause number assigned to the petition, and the court and county in which the petition was filed.

3. Expunction of Records

CCP Art. 45.0216

Special provisions for juveniles regarding the expunction of records exist under Chapter 45 of the Code of Criminal Procedure. SB 407 (82nd Legislature) amended

Article 45.0216 by amending Subsections (b), (d), and (f) and by adding Subsection (f-1). A person may apply to the court in which the person was convicted to have the conviction expunged on or after the person's 17th birthday if: (1) the person was convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; or (2) the person was convicted only once of an offense under Section 43.261, Penal Code. The request must contain the person's statement that the person was not convicted of any additional offense or found to have engaged in conduct indicating a need for supervision as described by Subsection (f)(1) or (2), as applicable. The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that: (1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and (2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), Family Code, while the person was a child. After entry of an order under Subsection (f), the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

CCP Art. 45.051(e)

Records may also be expunged if the case was dismissed under the deferred disposition provisions of the Code of Criminal Procedure, Article 45.051. The expunction procedure in such an instance is set out in Article 55.01 and is not the procedure set forth in Article 45.0216.

CCP Art. 45.0216(e)

The judge of the trial court must inform the juvenile and any parent in open court of the juvenile's expunction rights, and must provide a copy of Article 45.0216.

CCP Art. 45.0216(c),(d)

To have a record expunged, the person must make a written request, which must be under oath. The request must contain a statement that the person was not convicted of any offense described by Section 8.07(a) (4) or (5) while a child, other than the offense for which expunction is sought.

CCP Art. 45.0216(f)

If the court finds the required statement contained in the request is accurate, the court will order the conviction, along with all records and documents relating to the offense, to be expunged. Once the order of expunction is entered, the conviction may not be shown or made known for any purpose.

Alco. Bev. Code Sec. 106.12

Health & Safety Code Sec. 161.255

The provisions of Article 45.0216 do not apply to convictions under Chapter 106, Alcoholic Beverage Code; Chapter 161, Health and Safety Code; or Section 25.094, Education Code. In those instances, expunction proceedings are also brought in the court that originally heard the case, following the procedures set forth in those codes. The court shall charge a fee of $30 for each application for expunction to defray the cost of notifying state agencies of orders of expunction under these sections.

CCP Art. 45.0216(i)

Justice and municipal courts shall require a person requesting expunction under Code of Criminal Procedure Article 45.0216 to pay a fee of $30 to defray the cost of notifying state agencies of orders of expunction under this article.

Except as noted above, records of cases for juveniles are subject to the same provisions regarding expunction as other cases.

4. Destruction of Records

The court shall order the destruction of records relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if the court determines that no probable cause exists to believe the child engaged in that particular conduct. Records are also to be destroyed if the matter is referred to a prosecutor, and the prosecutor determines there is no probable cause.

Family Code Sec. 58.006

The Clerk is responsible for the destruction of records subject to expunction orders. The Clerk must destroy the records no earlier than the 60th day or later than the first anniversary of the date the expunction order was issued, unless the person is the subject of an expunction order on the basis of an acquittal or an expunction order based on an entitlement under Article 55.01(d) of the Code of Criminal Procedure. (The Clerk obviously has no such duty if the records were released to the person who is the subject of the expunction order.) The Clerk shall report the destruction of such files to the court.

CCP Art. 55.02, Sec. 5(d) and (e)

At least 30 days before the records are to be destroyed, the Clerk must notify the attorney for the state in the expunction proceeding. If the attorney objects to the records' destruction not later than the 20th day after receiving notice, the Clerk may not destroy records until the first anniversary, or the first business day following the first anniversary, of the date the expunction order was issued.

CCP Art. 55.02 Sec. (5)(d-1)

Destruction of the physical records and files in closed juvenile cases is detailed in Family Code Section 58.0071. The custodian of the physical records - in many cases, the custodian is the Clerk - may destroy the physical files and records if the information is duplicated in an electronic storage media. Depending on the allegations that were before the juvenile court, physical records may be destroyed when the respondent child is 18, 21 or 31 years old.

Family Code Sec. 58.0071

5. Inspection of Records and Dissemination of Information

Section 58.007 of the Family Code deals with physical records other than the information contained in the Juvenile Justice Information System (Subchapter B, Chapter 58, Family Code). Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records. Motor vehicle records and municipal or justice court records of criminal cases involving juveniles are not subject to the confidentiality requirements of this section. Additionally, sex offender records maintained under Chapter 62 of the Code of Criminal Procedure are also excluded under this law.

Family Code Sec. 58.007

Except as provided by Article 15.27 of the Code of Criminal Procedure (notification of arrest to school), the records and files of a juvenile court (this provision does not apply to the records of a justice or municipal court), a Clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under Title 3 (Chapters 51-61) of the Family Code are open to inspection and copying by:

HB 2862 (83rd Leg.)

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency as that term is defined by Section 58.101, Family Code;
- an attorney for a party to the proceeding;
- a public or private agency or institution providing supervision of the child

by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

- with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

A prosecuting attorney may obtain the record of a juvenile defendant's adjudication to offer it as evidence that is inadmissible under article 37.09(e)(a) of the Code of Criminal Procedure in the punishment phase of a criminal proceeding by submitting a request to the juvenile court.

Family Code Sec. 58.007(g)

The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

Family Code Sec. 58.007(h)

- the child's name, including other names by which the child is known;
- the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;
- a photograph of the child; and
- a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

Information collected and maintained by the Texas Juvenile Justice Department for statistical and research purposes is confidential. It may not be disseminated by the Department, except to certain entities for research purposes. It may also be disseminated for legislative purposes under Government Code Section 552.008.

Family Code Sec. 58.0072

No information in identifiable form may be released except to a criminal justice agency, the Texas Education Agency, an agency under the authority of the Health and Human Services Commission, or an agency which has an agreement with the Department detailing and restricting the use of the information. ("Identifiable form" means information that contains a juvenile's name or other personal identifiers which can be interpreted as referring to a specific juvenile offender.)

The Department is not required to release or disclose juvenile justice information to any person not identified by this section.

6. Restricted Access

Subchapter C, Title 3, Family Code, *Automatic Restriction of Access to Records*, provides for the automatic restriction of access to records for certain juvenile offenders. Automatic restriction to access to juvenile records is in addition to the sealing provisions covered elsewhere. Sex offender registration records, criminal combination or criminal street gang records, and records of indeterminate sentence or adult certification cases are exempt from automatic restriction of access to records.

Family Code Sec. 58.201 et seq.
Family Code Sec. 58.202

Juvenile case records are subject to automatic restriction of access if

Family Code Sec. 58.203HB 961 (82nd Leg.)

- the person is at least 17 years old;
- the juvenile case did not include conduct resulting in determinate sentence proceedings in the juvenile court under Section 53.045; and

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- the juvenile case was not certified for trial in criminal court under Section 54.02.

After the above conditions are met, restricted access occurs automatically when the person reaches age 17 unless the child is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department on or after the child's 17th birthday in which case the law regarding restricted access will not apply until the person is discharged from the jurisdiction of the court or department, as appropriate. No further action is required on the part of the person subject to the records.

Family Code Sec. 58.209(a)(7)

HB 2862 (83rd Leg.)

Section 58.207 allows the juvenile court to order that certain records relating to a juvenile case may be accessed under stipulated conditions to the same persons or agencies that DPS is authorized to allow access. When the agency maintaining the record receives the court order, the agency is authorized to allow access only under certain circumstances (e.g., by a criminal justice agency for a criminal justice purpose and for research purposes). Sections 58.204 and 59.207 were amended in 2013 by HB 2862 and HB 694. The changes primarily deal with allowing state and United States military forces and recruiters to access juvenile records so long as they have the written permission of the subject of the records. Otherwise, the agency is authorized to state that the records do not exist.

Family Code Sec. 58.204(b)

Family Code Sec. 58.207

HB 2862 (83rd Le.)
HB 694 (83rd Leg.)

Sections 58.205 and 58.206 set forth requirements relating to certification, restriction return and deletion of a juvenile's records by certain agencies, persons, or courts. Unless specific circumstances set forth in these sections exist, the person may state the records do not exist. A person who is the subject of records to which access is restricted may not waive the restricted status of the records or the consequences of the restricted status.

Family Code Sec. 58.205
Family Code Sec. 58.206

Sections 58.208 and 58.209 set forth provisions that, under specific conditions, certain officials are required to inform a child or the child's appropriate guardian or parent of issues related to the access of the child's juvenile record. The child can receive notification of an action restricting access to the child's records if the child provides a current address to the juvenile probation department before his or her 17th birthday. The Texas Youth Commission and the Texas Juvenile Justice Department are required to adopt rules to implement these provisions and facilitates the effective explanation of the access to a juvenile's records.

Family Code Sec. 58.208
Family Code Sec. 58.209
HB 961 (82nd Leg.)

Restricted access does not prevent or restrict the sealing or destruction of juvenile records as authorized by law.

Family Code Sec. 58.210

Restricted access to a juvenile record may be rescinded if:

Family Code Sec. 58.211(a)

- the Department of Public Safety receives information through its criminal history system that
- the subject of the restricted records has been convicted of a felony or a misdemeanor punishable by confinement in jail and
- the offense was committed after the subject turned 17

DPS shall notify the appropriate local juvenile probation departments, as provided in Family Code Section 58.203, that the records are no longer subject to restricted access.

On receipt of notification, the juvenile probation department shall notify the affected agencies (*see*, Family Code Section 58.207(b)) that the person's records are no longer subject to restricted access.

Family Code Sec. 58.211(b)

7. Local Juvenile Justice Information Systems

Subchapter D, Title 3 of the Family Code, *Local Juvenile Justice Information System*, describes local juvenile justice information systems. Sections 58.302 and 58.303 establish provision for membership of a county in a regional or local system and for the creation of a jointly maintained system as well as the type of information that may be contained in the system.

Family Code Sec. 58.301 et seq.

Section 58.305 provides that a local system, for single county and multi-county regions, include certain partner agencies within the county and the region. The bill also requires that governmental service providers and government placement facilities that are approved members be included as partner agencies within the local system of a multi-county region.

Family Code Sec. 58.305

Section 58.306 sets forth provisions relating to the level of access to information to which each partner agency in the system is entitled. Section 58.307 establishes the provisions relating to the confidentiality, destruction, sealing, or restricted access of information that is part of a system.

Family Code Sec. 58.306
Family Code Sec. 58.307

8. Sex Offender Registration

Section 62.351 *et seq*. of the Code of Criminal Procedure sets forth provisions regarding hearings to determine the need for sex offender registration of a juvenile, the appeal of such a decision, and the judicial discretion to excuse compliance with the requirement.

CCP Art. 62.351

The court may defer a decision on whether or not registration is required pending completion of a treatment program. The treatment provider is required to notify the juvenile court and the prosecuting attorney within ten days of completion of the program. The court retains its discretion to require or excuse registration during the course of treatment. Registration is excused following successful completion of a treatment program; however, the attorney representing the state may file a motion requesting registration be required in the interest of the public. The court will hold a hearing and make a determination.

CCP Art. 62.352(b),(c)

A person may file a motion seeking to be excused from registration, or seeking an order that the registration be nonpublic. If the motion is granted, the Clerk is required to send a copy of the order by certified mail, return receipt requested, to the Department of Public Safety and each local law enforcement agency that the person has proven to the court has registration information about him or her. The Clerk also sends notice to any public or private agency or organization that the court determines may have registration information pertaining to the person. The Clerk also must send a copy of the order to any other agency or organization designated by the person who is the subject of the order. The person provides the address (es) to the Clerk, and pays a fee of $20 for each agency or organization designated.

CCP Art. 62.353

A recipient of such an order must either remove information regarding the person's registration, or make it nonpublic. However, a public or private institution of higher education may not be required to delete the sex offender registration information.

CCP Art. 62.353(h)

9. Temporary Custodial Investigations

Family Code Sec. 58.0021
Family Code Sec. 58.0022

Sections 58.0021 and 58.0022 of the Family Code were added to establish provisions regarding a law enforcement officer who takes a child temporarily into custody to take the child's fingerprints or photograph for comparison in an investigation. This section also provides procedures for the destruction of fingerprints and photographs and an audit to verify the destruction. A law enforcement officer is only allowed to obtain fingerprints or photographs from a child at a juvenile processing office or at a location that affords reasonable privacy to the child.

E. REPORTING TO THE DEPARTMENT OF PUBLIC SAFETY

The Texas Department of Public Safety ("DPS") is responsible for recording data and maintaining a database for a computerized juvenile justice information system.

Family Code Sec. 58.108(a)

A Clerk of a juvenile court shall:

- compile and maintain records needed for reporting data required by DPS;
- transmit to DPS in the manner provided by DPS data required by DPS;
- give DPS or its accredited agents access to the agency or court for the purpose of inspection to determine the completeness and accuracy of data reported; and
- cooperate with DPS to enable DPS to perform its duties.

Family Code Sec. 58.108(b)

A Clerk of a court shall retain the documents described by section 58.108 of the Family Code.

Family Code Sec. 58.110(a)

DPS by rule shall develop reporting procedures that ensure that the juvenile offender processing data is reported from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system.

Family Code Sec. 58.110(c) HB 1435 (83rd Leg.)

The Clerk of the court exercising jurisdiction over a juvenile offender's case shall report the disposition of the case to DPS. In 2013 Section 58.110(c) was amended to remove the provision which made violating the reporting requirement by a Clerk a Class C misdemeanor offense.

Family Code Sec. 58.110(d)

In each county, the reporting agencies may make alternative arrangements for reporting the required information, including combined reporting or electronic reporting, if the alternative reporting is approved by the Juvenile Board and DPS.

Family Code Sec. 58.110(e)

Except as otherwise required by applicable state laws or regulations, information required to be reported to DPS shall be reported promptly. The information shall be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information, except that a juvenile offender's custody or detention without previous custody shall be reported to DPS not later than the seventh day after the date of the custody or detention.

Family Code Sec. 58.110(f)

Subject to available telecommunications capacity, DPS shall develop the capability to receive by electronic means the information required under this section to be reported to DPS. The information must be in a form that is compatible with the form required of data to be reported under this section.

F. RIGHTS AND RESPONSIBILITIES OF PARENTS

All Clerks whose courts handle juvenile law matters should be familiar with the provisions in Chapter 61. A brief summary of the three subchapters follows.

Family Code Sec. 61.001-61.004

Subchapter A, Entry of Orders Against Parents and Other Eligible Persons, defines circumstances in which a "juvenile court order" will be entered against the parent or other responsible adult. A "juvenile court order" is defined as an order by a juvenile court requiring a parent or other eligible person (e.g., a guardian) to act or refrain from acting. For example a parent may be ordered to pay probation fees, restitution or court costs. A parent may also be ordered to participate in counseling or to refrain from doing any act injurious to a particular child's welfare. (The list of potential juvenile court orders is set out in Section 61.002, and includes an order for payment of fees under Family Code, Section 54.0462 (Payment of Fees for Offenses Requiring DNA Testing). The parent or other adult must be provided notice of the proposed order, and must be given an opportunity to be heard concerning it. A parent or other adult may appeal the order as in other civil cases. SB 407 (82nd Legislature) added 61.002(17), which adds payment of the cost of attending an educational program under Section 54.0404 to the previously existing list..

Family Code Sec. 61.002(a)(16)

Family Code Sec. 61.051 – 61.057

Subchapter B, Enforcement of Order Against Parent or Other Eligible Person, details the procedures for enforcing juvenile court orders, and remedies for contempt. A motion to enforce is filed, and a hearing is set. The court is required to issue a written notice, served by personal service or certified mail, of the hearing on the motion to enforce. If incarceration is a possible punishment upon the motion being granted, the court must also inform the person who is subject to the motion to enforce of his or her right to an attorney. An indigent person must also be informed or his or her right to have an attorney appointed, and the court shall appoint an attorney if the person so requests. Punishment on a finding of contempt in an enforcement proceeding can include up to six months in jail and a fine of up to $500, or both.

Family Code Sec. 61.101 – 61.107

Subchapter C, Rights of Parents, sets forth the right of parents in connection with procedures in juvenile court. Parents have the right to be informed of proceedings, the right of access to their child, and the right to make written and oral statements concerning the matter in juvenile court. The failure to exercise any of these rights may not be used as a ground for appeal, for a post-adjudication writ of habeas corpus, or exclusion of evidence against the child in any proceeding.

CHAPTER 12

PARENTAL NOTIFICATION

A. INTRODUCTION

In 1999, the Legislature enacted legislation requiring parental notification or judicial approval before a minor can have an abortion. As of January 2000, minors who choose to have an abortion without notifying a parent must obtain approval by a judge. These cases are legally confidential and of a sensitive nature. Many of these cases will be filed in district court.

Family Code Chapter 33

The statute and the Texas Supreme Court Parental Notification Rules ("SCR") require that these proceedings be conducted to ensure the minor's confidentiality and anonymity. The Supreme Court's instructions and forms (with changes from 2001 and 2007) are available at the following website: http://www.txcourts.gov/media/514731/TxParentalNotification_20070301.pdf The Clerk's only duty is to file the application and, if needed, provide assistance to the minor in completing the application. All communication must be limited to the procedure for filing an application and must be in a respectful manner. Do *not* offer the minor any advice, opinion, or referral to any organization regarding problem pregnancies.

Family Code Sec. 33.003(k)

SCR 1.3(a)
SCR 1.4(a)

The Clerk may not divulge to anyone, except essential court personnel, anything about the minor's application, including the fact that the minor was ever in the Clerk's office. The Clerk may not divulge to anyone that the minor is or ever has been pregnant, or wants or ever wanted an abortion.

The application and all other court documents pertaining to the proceeding, and all information contained therein, are confidential and privileged. (The Supreme Court of Texas has ruled that even the disclosure of which trial court in which a proceeding was held violates confidentiality.) The documents are not subject to disclosure under Chapter 552 of the Government Code, nor are they subject to discovery, subpoena, or other legal process. They may be disclosed only when expressly authorized by the Supreme Court Rules. An order, ruling, opinion, or Clerk's certificate may be released only to the minor; her guardian ad litem; her attorney; a person specifically designated in writing by the minor; a governmental agency in connection with a proceeding seeking to assert or protect the minor's interest; or another court, judge, or Clerk in the same or related proceedings.

SCR 1.4(b)

In Re Jane Doe, 19 S.W. 3d 249 (Supreme Court of Texas – 2000)

> ***NOTE:*** *The 79th Legislature amended Section 164.052 of the Occupations Code to prohibit a doctor from performing an abortion on an unemancipated minor without written parental consent, UNLESS a court order is obtained in accordance with Family Code Section 33.003 or 33.004. (The physician may perform an abortion without parental consent under certain emergency circumstances, which are unrelated to Clerks' duties.) In other words, the judicial bypass provisions detailed below remain in full force and effect.*

Occ. Code Sec. 164.052(a)(19)

B. FILING THE APPLICATION

Unless a minor meets the medical necessity criteria and her physician gives the

Family Code

notice required under Section 33.002(a) (4), the minor must have judicial approval in order to have an abortion without parental notification. A minor who wishes to have an abortion without notification to one of her parents or legal guardian may file an application for a court order authorizing the minor to get an abortion without notifying one of her parents.

Sec. 33.003(a)

The application may be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in any county in this state, regardless of the where the minor resides or where the abortion sought is to be performed. No filing fees or court costs may be assessed or charged to the minor.

Family Code
Sec. 33.003(b)
Sec. 33.003(n)

SCR 1.9(a)
SCR 2.1(a)

There may be no reference to the minor's identity anywhere in the proceedings, except on the separate verification page, discussed below. In all other court documents, the minor is referred to as "Jane Doe." To preserve her anonymity, all notices and communication from the court must be to the minor's attorney with a copy to the guardian ad litem. This requirement takes effect when an attorney appears for the minor, or when the Clerk has notified the minor that an attorney ad litem or guardian ad litem has been appointed for her.

SCR 1.3(b)
SCR 1.3(c)

1. Application Requirements

To further ensure confidentiality, the rules promulgated by the Supreme Court require that the application be in two parts: the cover page and the verification page. The cover page must be styled "In re Jane Doe" and must not contain any identifying information about the minor.

SCR 2.1(c)(1)

The cover page must state:

- that the minor is pregnant;
- that the minor is unmarried, is under 18 years of age, and has not had her disabilities of minority removed;
- a statement that the minor wishes to have an abortion without notifying either of her parents or a managing conservator or guardian;
- whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney; and
- whether the minor has filed a Confidential Application for Waiver of Parental Notification other than this one.

The separate verification page must be signed under oath by the person completing it and must state:

SCR 2.1(c)(2)

- the minor's full name and date of birth;
- the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
- a telephone number or pager number, whether hers or someone else's, at which the minor can be contacted immediately and confidentially until an attorney is appointed for her; and
- that all the information contained in the application is true.

2. Electronic Filing, Hearings and Records

SCR 1.5

The rules promulgated by the Supreme Court of Texas permit electronic filings, hearings and records.

Documents may be filed by facsimile or other electronic data transmission. The Clerk may transmit orders, rulings, notices, and other documents by facsimile or other electronic data transmission. Care should be taken to ensure the documents electronically transmitted, either to or from the court, cannot be seen by other parties to maintain confidentiality.

With the court's permission, the guardian ad litem, the attorney ad litem, and any witnesses may appear by video conferencing, telephone, or other remote electronic means. However, the minor must appear before the court in person, unless the court determines that her appearance by video conferencing is sufficient to assess her credibility and demeanor.

If a court reporter is unavailable at the time of the hearing, a record of the hearing may be made by audio recording or other electronic means. If the decision is appealed, the recording must be transcribed, if possible. The person transcribing the recording must certify the accuracy of the transcription. Both the recording and the transcription must be included in the record on appeal that the Clerk sends to the court of appeals.

3. Clerk's Duties

SCR 2.2(a)
SCR 1.7

The Clerk must give prompt and courteous assistance to persons seeking to file an application. In fact, the Clerk is required to provide a copy of the Supreme Court Parental Notification Rules as well as the relevant forms promulgated by the Supreme Court (such as the application form) to any person without charge. The forms must be in both English and Spanish. The rules and forms can be accessed on the Supreme Court's website: http://www.txcourts.gov/rules-forms/rules-standards.aspx.

SCR 2.2(a)

The Clerk should ensure that both the cover page and the verification page of the application are completed in full. If requested, the Clerk will administer the oath required for the verification page, or provide a person authorized to do so.

SCR 2.2(b)

Because of the confidentiality requirements, the Clerk should not enter information about the case in case management software or docket the application as a regular case. The Clerk must assign a case number and write it on the cover page and the verification page, then provide a certified copy of the verification page to the applicant. The verification page must be filed under seal in a secure place, with access limited to essential court personnel.

SCR 2.1(b)(3)
SCR 2.1(b)(4)

The initial assignment of an application to a specific court in a county is made by the Clerk with whom the application is filed. Judges may be assigned in accordance with a county's local rules, which require approval by the Supreme Court of Texas. If there is no local rule, the Clerk receiving the application (whether District Clerk or County Clerk) assigns it to a district court, if a judge is in the county. If not, the case is then assigned to a statutory county court or probate court. If that judge is not in the county, then the case is assigned to a constitutional county court, if it has probate jurisdiction and if the judge is in the county. If the case cannot be assigned under any of these requirements, then it is assigned to the district court.

If the judge of the court to which the application is assigned is not in the county, the Clerk must immediately inform the local administrative judge or judges and the presiding judge of the administrative judicial region so the case may be reassigned. *SCR 2.2(d)*

C. JUDICIAL PROCEEDINGS

1. Before the Hearing

The Clerk of the court must deliver a copy of the application (the cover page and the verification page) to the judge who is to hear the application. *SCR 2.2(c)* *Family Code Sec. 33.003(d)*

The court is required to appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court is required to appoint an attorney to represent the minor. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's attorney. *Family Code Sec. 33.003(e)*

The court must fix a time for a hearing on an application filed and shall keep a record of all testimony and other oral proceedings in the action. The Clerk must give notice of the time and place of the hearing, and must notify the persons appointed as guardian ad litem and attorney ad litem of their appointments, as well as the time and place of the hearing. *Family Code Sec. 33.003(g)* *SCR 2.2(e)*

A minor may object to the assignment of a judge, or file a motion to recuse or disqualify the judge. The objection or motion must be filed before 10:00 a.m. of the first business day following the filing of the application, or promptly after the assignment of a judge to hear the case is made known to the minor or her attorney, whichever is later. Such objection or motion does not extend the deadline for ruling on a minor's application. The minor may object to, or file a motion to recuse or disqualify the judge only once in the proceeding. *SCR 1.6(a)* *SCR 1.6(d)*

A judge may recuse himself voluntarily, and must do so immediately, if that is his choice. If the judge does not remove himself voluntarily, then the judge must immediately refer the matter to the appropriate judge or justice, pursuant to local rule. That judge or justice must rule on the objection or motion as soon as possible, and may do so with or without a hearing. If the motion is granted, the judge or justice who made the ruling must assign a new judge immediately. *SCR 1.6(b),(c)*

Any judge involved in a proceeding in any capacity may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. A minor's attorney and guardian ad litem must have access to the case file to the extent necessary to perform their respective duties. *Comment No. 3 to SCR Rule 1 (2001)*

To assist the court in making its determination, amicus briefs may be submitted to the court. These briefs are not to be filed with the Clerk, and are subject to all anonymity and confidentiality provisions contained in the Supreme Court Rules and Chapter 33, Family Code. *SCR 1.10*

2. After the Hearing

The court must enter judgment on the application immediately after the hearing is concluded. The court must rule on an application and issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the application is filed with the court. The Clerk must provide a copy of the order, including the findings of fact and conclusions of law, to the minor and her guardian ad litem. *Family Code Sec. 33.003(g)* *Sec. 33.003(h)* *SCR 2.2(f)*

The time to issue an order may be extended only upon request by the minor. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing.

SCR 2.4(a)
SCR 2.4(d)
SCR 2.5(d)

If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002 of the Family Code.

SCR 2.5(d)

Family Code Sec. 33.003(h)

These proceedings shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

SCR 1.2(a)

Family Code Sec. 33.003(h)

An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the minor, the minor's guardian ad litem, the minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

Family Code Sec. 33.003(l)

3. Payment of Fees and Costs

The court may order the State to pay the cost of any guardian ad litem and attorney ad litem appointed for the minor. The court may also order the State to pay associated court fees and costs, as well as any court reporter's fees incurred. Court costs include the expenses of an interpreter, but not witness fees or fees which must be remitted to the state treasury.

Family Code Sec. 33.007

SCR 1.9(b)

The order must be directed to the Comptroller of Public Accounts, but should be sent by the Clerk to the Director, Fiscal Division, Texas Department of Health.

SCR 1.9(b)(2)

The Attorney General has issued several open records rulings regarding what information may be released without impairing confidentiality. Identification of the trial court, amounts paid to a specific trial court, information regarding attorneys appointed and amounts paid to them, and a list of attorneys who have received payments have all been held to be confidential. These types of information, as well as any other information that may serve to identify a trial court or any participant in a proceeding, are exempt from disclosure under Government Code Chapter 552.

OR 2001-2485
OR 2002-2558
OR 2002-3007

D. CERTIFICATE

As discussed above, if the relevant judge fails to rule on an application within the time required by Section 33.003(g, h) of the Family Code then the application is deemed to be granted. Upon the request of the minor or her attorney, the Clerk must immediately issue a certificate stating that the application is deemed by statute to be granted.

SCR 2.2(g)

E. APPEAL

A minor whose application has been denied may appeal to the court of appeals with jurisdiction over civil matters in the county in which the application was filed. When the application is denied, the court must inform the minor of her right to appeal and furnish her with the appropriate appeal form.

SCR 2.5(e)

Family Code Sec. 33.004

Upon receipt of a notice of appeal, the Clerk of the court that denied the application shall deliver to the appellate court a copy of the notice of appeal and the Clerk's record. The Clerk will include the reporter's record if it has been provided and is in the file. (Court reporter's notes, in any form, may be filed with other court documents in these proceedings in order to preserve confidentiality.) The verification page is not included in the record on appeal.

Family Code Sec. 33.004

SCR 1.4(c)
SCR 3.2(b)

The trial court Clerk must not send the record to the Clerk of the court of appeals by mail but must, if feasible, deliver the record by hand or transmit it by facsimile or other electronic means.

SCR 3.2(b)

The minor or her attorney is responsible for filing a notice of appeal with the appropriate court of appeals, and for notifying the court of appeals by telephone that the appeal is being taken under Family Code 33.003.

SCR 3.1

It is the Clerk's responsibility to give prompt assistance to persons seeking to file an appeal. Such assistance includes assuring that the notice of appeal is sent to the proper court of appeals, and that no identifying information is disclosed.

SCR 3.2(a)

The appellate proceeding is not subject to disclosure, nor to subpoena, discovery, or other legal process. The Family Code bars the courts of appeals from releasing their opinions. A filing fee is not required and costs may not be assessed to the minor for filing an appeal.

Family Code Sec. 33.004(c) Sec. 33.004(e)

In re Doe, 19 S.W.3d 249 (Tex. 2000).

A minor may appeal to the Supreme Court of Texas if her appeal is denied by the court of appeals. The District Clerk has no role in this proceeding, except to inform the minor of the availability of this remedy and provide whatever assistance the minor may request. Please note that the Supreme Court of Texas has ruled that its opinions (as opposed to opinions by the courts of appeals) may be released. But the Court is not to disclose any identifying information regarding the minor, the trial court, or the court of appeals in its opinion. The Supreme Court has expressly declined to rule on whether the Family Code provisions barring the courts of appeals from releasing their opinions are constitutional.

SCR 4
In re Doe, 19 S.W.3d 249 (Tex. 2000).

CHAPTER 13

RECORDS RETENTION AND MANAGEMENT

A. INTRODUCTION

This chapter provides a synopsis of the duties and responsibilities of District Clerks under the Local Government Records Act (Chapters 201-205, Local Government Code). The Act applies to all local governments and elected county officials, not just District Clerks.

This chapter does not discuss all the provisions of the Act, but only those that District Clerks should know in order to fulfill their records management obligations.

The Act requires that all District Clerks establish programs for the efficient and cost-effective management of the records of their offices. It also requires that the records of the office of District Clerk be retained for minimum periods of time set by the Texas State Library and Archives Commission before they are eligible for disposal.

B. STATE AGENCY CONTACT

If a Clerk has questions regarding the Local Government Records Act or would like to request assistance in establishing a records management program, the Clerk should contact the Texas State Library, State and Local Records Management Division, by mail at P.O. Box 12927, Austin, Texas 78711-2927, or by phone at 512/463-7610. Information is also available on the Texas State Library's website: https://www.tsl.texas.gov/slrm/contact/index.html including a link to contact the library by e-mail at slrminfo@tsl.texas.gov.

C. RECORDS MANAGEMENT, GENERAL PROVISIONS

1. Definitions

Custodian: District Clerks are the "custodians" of the records of their respective offices. *Local Gov't Code Sec. 201.003(2)*

Essential Record: Records that are necessary for the resumption or continuation of operations in an emergency or disaster in order to recreate the office's legal and financial status or to fulfill the office's legal obligations to the public. *Local Gov't Code Sec. 201.003(5)*

Local Government Record: Any information created or received by a District Clerk pursuant to law or in the transaction of public business is a local government record, regardless of whether it is a document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or any other type of information recording medium and regardless of whether it is an open or closed record. *Local Gov't Code Sec. 201.003(8)*

For the purposes of the Local Government Records Act, the following are **not** local government records:

- Extra identical copies of documents created for the convenience of an employee or official
- Notes, journals, diaries, and similar documents created for the convenience of an employee or official (e.g., telephone message pads and

desk calendars)

- Blank forms (e.g., superseded cash receipt forms)
- Stocks of publications
- Library and museum materials acquired solely for the purpose of display or reference (e.g., law books)
- Copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Government Code, commonly known as the Public Information Act
- Any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Section 2009.054(c) of the Government Code, associated with a matter conducted under an alternative dispute resolution procedure to which a government entity was a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization

2. Declaration of Records as Public Property

Local government records are public property and no official has any personal property right in them.

Local Gov't Code Sec. 201.005

3. Records to be Delivered to Successor in Office

A custodian of local government records must deliver to his or her successor all records of the office.

Local Gov't Code Sec. 201.006

4. Alienation of Records Prohibited

A District Clerk may transfer custody of a local government record to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer after the expiration of the records retention period under the local government's records control schedule.

Local Gov't Code Sec. 202.004(a)

A District Clerk may not transfer custody of any of his or her local government records to a private organization or individual without the consent of the Director and Librarian of the Texas State Library. This prohibition does not apply to records that are temporarily transferred for the purpose of microfilming, conversion to electronic media, restoration, or other records management activities or when records are to be destroyed by sale or donation to a recycler.

Local Gov't Code Sec. 202.004

5. Personal Liability

A District Clerk who destroys records in compliance with the Local Government Records Act and rules adopted under it is not personally liable for the destruction of those records.

Local Gov't Code Sec. 202.007

6. Penalty for Destruction or Alienation of Records

A District Clerk who knowingly or intentionally destroys or alienates local government records or fails to deliver the records of his or her office to a successor, contrary to the provisions of the Local Government Records Act or rules adopted under it, commits a Class A misdemeanor.

Local Gov't Code Sec. 202.008

D. RECORDS MANAGEMENT IN THE OFFICE OF THE DISTRICT CLERK

1. Administration, Duties and Support

a. District Clerk as Records Management Officer

The Texas State Library and Archives Commission has published a new retention schedule for District Clerks, which may be viewed, or downloaded in word or pdf at the following website https://www.tsl.texas.gov/slrm/recordspubs/dc.html. This website also provides a document which lists the changes.

Local Gov't Code Sec. 203.001

A District Clerk is automatically designated as the records management officer for his or her office.

A District Clerk may, at his or her discretion, designate the person appointed by the commissioners court to serve as records management officer for the non-elective offices of the county to serve as records management officer for the office of District Clerk. It is important to note that in doing so, a District Clerk does not relinquish legal custody of records to the county records management officer but rather chooses to participate in one or more specific components of a countywide records management program and to have the county records management officer assist the Clerk in meeting the requirements of the Local Government Records Act.

Local Gov't Code Sec. 203.005(g)

A District Clerk may not be designated as records management officer for the non-elective offices of the county without the Clerk's consent.

Local Gov't Code Sec. 203.025(g)

b. Duties of District Clerk as Records Management Officer

A District Clerk, as the records management officer for his or her office, is responsible for all of the following:

Local Gov't Code Sec. 203.002

- Developing a records management program
- Administering the records management program efficiently and effectively
- Preparing and filing with the Director and Librarian of the Texas State Library a records control schedule
- Preparing requests for authorization to destroy records not on an approved control schedule and the originals of microfilmed permanent records
- Preparing requests to store records electronically
- Identifying and ensuring the preservation of records of permanent value
- Identifying and ensuring the preservation of essential records
- Ensuring that records management activities (e.g., destruction, preservation, and microfilming) are conducted in accordance with the requirements of the Local Government Records Act and rules adopted under it
- Cooperating with the Texas State Library in records management surveys

c. Duties of Commissioners Court

Local Gov't Code Sec. 203.003

The commissioners court of each county is required to support sound records management for all elected county offices and to enable elected county officers to meet the requirements of the Local Government Records Act. The commissioners court also must establish three funds to support records management activities in county offices — one for the County Clerk only, another for the District Clerk only, and the third for any county office.

Gov't Code Sec. 51.305(b) Sec. 51.317

Local Gov't Code Sec. 118.052 118.0546 118.0645

CCP Art. 102.005(f)(g)(h)

Section 51.317 of the Government Code requires District Clerks to collect a $10 fee upon the filing of a civil case. The fee is paid to the county treasurer for deposit when the case is filed. Five dollars of the fee is to be deposited in the District Clerk Records Management and Preservation Fund, and the other five dollars goes to a similar county fund. There are also fees in criminal cases for records management and preservation services. The amounts of those fees are set out in Article 102.005(f)(g)(h), Code of Criminal Procedure. Section 51.305(b) of the Government Code allows district clerks to collect a filing fee to maintain district court records and archives. HB 1513 from the 83rd Legislature Regular Session increased the cap for this fee from $5 to $10 effective 9/1/13.

2. Planning the Records Management Program

a. The Records Management Plan

Local Gov't Code Sec. 203.005

Each District Clerk must prepare a written records management plan for his or her office that sets out policies and procedures that will enable the Clerk to fulfill his or her responsibilities as a records management officer. The plan must be filed with the Director and Librarian of the Texas State Library within 30 days after its adoption.

b. Model Plan Available

The Texas State Library has prepared a model plan that can be used by District Clerks to meet the requirement of the Local Government Records Act that a written records management plan be prepared and filed. To request the model, a District Clerk should contact the Texas State Library. A model plan is available on the library's website: https://www.tsl.state.tx.us/slrm/recordspubs/localretention.html A new model plan is now available.

c. Deadlines and Determining Status

The deadline for filing a written plan was January 1, 1991. A District Clerk who has recently assumed office and is uncertain whether his or her predecessor fulfilled this requirement of the Act should contact the Texas State Library.

3. Scheduling Records

a. The Records Control Schedule

Local Gov't Code Sec. 203.041

Each District Clerk must prepare and file with the Director and Librarian of the Texas State Library a records control schedule that lists the records of his or her office and how long the Clerk proposes to retain the records listed before disposing of them. The schedules were to have been filed on or before January 4, 1999.

The schedule must list all record by records series. This includes both records created and maintained in the office and records no longer created or received that the Texas State Library has determined must be retained permanently or for periods that

have not yet expired at the time the Clerk prepares the schedule.

The Clerk should prepare amendments to the records control schedule as needed to reflect new records created or received by the Clerk's office or revisions to retention periods established in a records retention schedule issued by the State Library and Archives Commission.

In lieu of filing a records control schedule (or an amended records control schedule), a District Clerk may file with the Director and Librarian of the Texas State Library a written certification of compliance (or an amended written certification of compliance) that the Clerk's office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by the Texas State Library and Archives Commission.

Schedules may be filed on an office-by-office or department-by-department basis. A District Clerk may, for instance, submit one schedule for administrative records, a second for court records, and a third for all other records.

b. Retention Periods

Local Gov't Code Sec. 203.042

The retention periods chosen by the District Clerk for the records of his or her office may not be less than the minimum retention periods established by the Texas State Library and any other retention period established by state or federal law for the various records of the office of District Clerk.

The Texas State Library minimum retention periods for District Clerks' records are available electronically at the following web address: http://www.tsl.state.tx.us/slrm/recordspubs/dc.html.

4. Not Scheduling Records

a. Declaring Intention to Keep All Records Permanently

Local Gov't Code Sec. 203.041(g)

A District Clerk who wishes to keep all records of his or her office permanently or wishes to destroy only those for which the Texas State Library has not set minimum retention periods is not required to prepare and file records control schedules.

b. How to Make the Declaration

The model plan prepared by the Texas State Library has a section in which the decision to prepare a records control schedule or to declare permanent retention can be made.

c. What the Declaration Means

Remember that a declaration of intention to keep all records permanently means even such records as cash receipts would have to be retained indefinitely.

5. Microfilming Records

a. Records that May Be Filmed

Local Gov't Code Sec. 204.002

Any record of a District Clerk may be filmed and retained on microfilm either as the sole recording media or in addition to paper or other media.

b. Microfilming Standards

Any filming of records must be in accordance with microfilming standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code, or are available on request from the Texas State Library.

Local Gov't Code Sec. 204.004

13 TAC Sections 7.21-7.35

All microfilm produced before June 1, 1990, under prior law is validated to the extent the microfilm was produced in the manner and according the standards prescribed by prior law. The Texas State Library and Archives Commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by law.

Local Gov't Code Sec. 204.003

c. Indexing

An index to a microfilmed record must show the same information that state law requires for the same record if not microfilmed.

Local Gov't Code Sec. 204.006

d. Destruction of Records

If the minimum retention period set by the Texas State Library for the original record is less than permanent, the record may be destroyed after the District Clerk is satisfied that the microfilm has been produced in accordance with the standards of the Texas State Library and Archives Commission. Permission from the Texas State Library is not required for destruction. A list of the originals destroyed must be filed with the Clerk. The microfilmed record must be retained until the expiration of its retention period for the record.

Local Gov't Code Sec. 204.007

If the minimum retention period set by the Texas State Library for the original record is permanent and the District Clerk is satisfied that the microfilm has been produced in accordance with the standards of the commission, it may be destroyed after authorization is obtained from the Director and Librarian of the Texas State Library. Forms for this purpose are available from the Texas State Library. As part of the authorization, the Director and Librarian may require that the records be transferred to the custody of the Texas State Library rather than being destroyed. The microfilm of permanent records must be retained permanently.

Local Gov't Code Sec. 204.008

e. Effect as an Original Record

Microfilm records produced in accordance with the standards of the Texas State Library and Archives Commission or in accordance with prior law if filmed before June 1, 1990, are to be accepted by state agencies and courts as certified copies of original records.

Local Gov't Code Sec. 204.011

6. Storing Records Electronically

a. Records that May Be Stored Electronically

Any record of a District Clerk may be stored electronically (e.g., on computer hard disk, magnetic tape, optical disk, or similar machine-readable medium) in addition to or in lieu of any other medium.

Local Gov't Code Sec. 205.002

b. Electronic Storage Standards

The electronic storage of any record whose minimum retention period is set by the

Local Gov't Code Sec. 205.003

Texas State Library as 10 years or more must be stored in accordance with standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

13 TAC Sections 7.71-7.79

c. Electronic Storage Authorization Requests

Before electronically storing any record whose retention period is set by the Texas State Library as 10 years or more, the District Clerk must obtain authorization to do so. Forms are available for this purpose from the Texas State Library.

Local Gov't Code Sec. 205.007

d, Destruction of Source Documents

If an electronic storage authorization request is approved, the source document may be destroyed. If the minimum retention period set for a source document is less than 10 years (for which an electronic authorization request is not required), the source document may be destroyed after the information in it is stored electronically.

Local Gov't Code Sec. 205.008

In either case, the electronic recording medium and the software and hardware necessary to read it must be kept until the retention period for all source documents has expired.

A District Clerk may also destroy electronically stored records if the source documents have been retained or if a paper or microfilm copy of the data has been generated from the electronic media.

e. Indexing

An index to records stored electronically must show the same information that state law requires for the source document.

Local Gov't Code Sec. 205.006

f. Denial of Access Prohibited

Persons under contract with a District Clerk to provide electronic services or equipment may not refuse to provide the Clerk timely access to the records of the office in a usable format.

Local Gov't Code Sec. 205.009

7. Destruction of Records

a. When Lawful Destruction Can Occur

A District Clerk may lawfully destroy records if:

Local Gov't Code Sec. 202.001

- They appear on the office's records control schedule submitted to and approved by the Director and Librarian of the Texas State Library and Archives Commission and their retention periods on the schedule have expired or the original records have been microfilmed or stored electronically in accordance with Chapters 204 and 205, Local Government Code, respectively, including administrative rules of the Texas State Library and Archives Commission adopted under those chapters.
- They appear on a list of obsolete records approved by the Director and Librarian of the Texas State Library and Archives Commission.
- They do not appear on the office's approved records control schedule or a

schedule has not yet been submitted and a Request for Authorization to Destroy Unscheduled Records (Form SLR 501) has been submitted to and approved by the Director and Librarian of the Texas State Library.

NOTE: *If a District Clerk wishes to dispose of a backlog of obsolete records prior to submitting a records control schedule as provided by Section 203.044, Local Government Code, the Clerk should use Form SLR 5-1 for this purpose. These request forms are available from the Texas State Library.*

- They are destroyed pursuant to an expunction order.
- The Texas State Library and Archives Commission has defined the records as exempt from scheduling or filing requirements.

b. Litigation and Open Records Requests

Local Gov't Code Sec. 202.002

A District Clerk may not destroy any records the Clerk knows to be a subject of litigation or for which there is an open records request until the matter is resolved.

c. Method of Destruction

Local Gov't Code Sec. 202.003
Local Gov't Code Sec. 202.006

Normally a Clerk may destroy records by burning, shredding, pulping, burial in a landfill, or sale or donation for recycling. A Clerk who sells or donates records for recycling is required to establish procedures to ensure that the records are rendered unrecognizable as local government records by the recycler.

Records designated as exempt from public disclosure by the Open Records Act or any other state law may be destroyed only by burning, shredding, or pulping. Extra, identical copies of these closed records must be destroyed in the same manner.

CHAPTER 14

OTHER DUTIES

A. INTRODUCTION

The major duties of the District Clerk have been covered in previous sections of this manual. There remain, however, many duties that can only be classified as miscellaneous. Some of these duties are applicable to all Clerks while some may be applicable only to individual Clerks on a local basis. Individual Clerks may wish to add pages to this manual to further explain procedures for miscellaneous duties.

This chapter will address the duties relating to the collection of community supervision fees, bookkeeping, reporting, passports, testifying, inquests, and payments to the county treasurer.

B. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS

CCP Art. 103.003(b)

Community supervision and corrections departments (CSCD's), formerly known as probation departments, are operated differently from county to county. A CSCD may collect fees with the written approval of the Clerk of the court or fee officer. In all counties, it is good practice for the Clerk to set up a community supervision file record showing the defendant's name, case number, term of community supervision, and costs and fines to be paid.

This section covers the most common types of community supervision, and focuses on duties of the District Clerk.

1. Upon Conviction, Plea of Guilty or Plea of Nolo Contendere

CCP Art. 42.12, Sec. 3(a) Sec. 3g

The judge has authority under certain circumstances to suspend the imposition of the sentence and place the defendant on community supervision (formerly known as probation). Placement on community supervision means the defendant will not be committed (that is, confined to jail or prison) as long as he or she observes the conditions set for community supervision.

CCP Art. 42.12 Sec. 4(a) and (e)

The jury may recommend community supervision in its verdict. The judge shall place the defendant on community supervision upon the jury's recommendation. To be eligible for jury-recommended community supervision, a defendant must file a written sworn motion, before the trial begins, that he or she has not been previously convicted of a felony AND the jury must enter a finding that the information in the defendant's motion is true.

CCP Art. 42.12, Sec. 6(a) and (b)

The jurisdiction of a court imposing a sentence of imprisonment in the institutional division of the Texas Department of Criminal Justice (*i.e.*, upon a felony conviction) continues for 180 days from the date the sentence actually begins. The judge may suspend further execution of the sentence during that time frame and place the defendant on community supervision. The judge may do so on his or her own motion, the motion of the attorney representing the state, or the defendant's motion. When the defendant files such a motion, he or she must give a copy to the state's attorney.

Upon filing of a motion by the state's attorney or the defendant, and if the judge so requests, the Clerk shall request a copy of the defendant's record while imprisoned from the TDCJ, or from the sheriff if the defendant is confined in a county jail.

CCP Art. 42.12, Sec. 6(b)

The judge may deny the motion without a hearing. However, the motion may not be granted unless a hearing is held and the defendant and the state's attorney are both given the opportunity to present evidence.

CCP Art. 42.12, Sec. 6(c)

Similar provisions and procedures apply for misdemeanor convictions.

CCP Art. 42.12, Sec. 7

Senate Bill 345 from the 83rd Legislature Regular Session abolished the State Boot Camp Program. This bill repeals Article 42.12, Section 8 of the Code of Criminal Procedure and repeals Section 499.052 of the Government Code. The bill provides that on and after the effective date (9/1/13) a judge is prohibited from recommending a person for placement in the state boot camp program and a participant in the state boot camp program remains a participant in the program only until either the date on which the convicting court suspends further execution of the sentence and reassumes custody of the person or the date on which TDCJ transfers the person to another unit in TDCJ, whichever is later. The bill also requires TDCJ, not later than December 1, 2013, to adopt the policy, including a schedule for implementing the policy, required by Section 501.009, Government Code, as amended by this bill. .

Senate Bill 345 83rd Legislature

REPEALS: CCP Art. 42.12, Sec. 8 and Gov't Code Sec. 499.052

The court may alter or modify the conditions of community supervision at any time. Generally, only the court in which the defendant was tried may grant, revoke or modify conditions of community supervision. The court may transfer jurisdiction to another court with the transferee court's consent.

CCP Art. 42.12, Sec 10(a) and (d)

Only the sentencing judge may place the defendant on community supervision under Article 42.12, Section 6 (discussed above). If a motion is received under Section 6 and the sentencing judge is deceased, disabled, or the office is vacant, the Clerk must promptly forward a copy of the motion to the presiding judge for the administrative judicial region for that court. The presiding judge may deny the motion without hearing, or may appoint a judge to hold a hearing.

CCP Art. 42.12, Sec. 10(a)

After a defendant is placed on community supervision, the court may transfer jurisdiction to another court of the same rank having geographical jurisdiction where the defendant resides or where a violation of conditions occurs. Upon transfer, the Clerk of the original court must forward a transcript of portions of the record to the transferee court as directed by the transferring judge. Thereafter, the transferee court proceeds as though trial and conviction had occurred in that court.

CCP Art. 42.12, Sec. 10(b)

As discussed above, community supervision officers have limited authority to modify conditions of community supervision. The officer must deliver a copy of the modified conditions to the defendant, file a copy with the sentencing court, and note the date of delivery in defendant's file. If the defendant agrees to the modification in writing, the officer files a copy of the modified conditions with the District Clerk. If the defendant does not agree, the case is referred to the sentencing judge for modification under Article 42.12, Section 22, which is discussed below.

CCP Art. 42.12, Sec. 10(e)

The terms of community supervision include a fee of at least $25 and not more than $60.00 per month to be paid as a supervision fee. The judge may waive or reduce the fee, or suspend monthly payment of the fee, if such payment would cause a significant financial hardship. Fees are deposited into the special fund of the county treasury. Senate Bill 1096 from the 83rd Legislature Regular Session amended Article 42.12, Section 19 by

CCP Art. 42.12, Sec. 19(a) and (b)

SB 1096 83rd Legislature

adding Section 19(a-1). This new section provides that a judge may not require a defendant to pay the fixed monthly fee under Section (a) for any month after the period of community supervision has been terminated by the judge.

In addition to the above fee, a person placed on community supervision who was convicted of certain sexual offenses, domestic violence or public indecency is required to pay an additional fee of $5 per month.

CCP Art. 42.12, Sec. 19(e)

If a substance abuse program is required as a condition of community service, the judge may order the defendant to pay a fee for aftercare. The Clerk collects this fee and deposits it for remittance to the Comptroller as provided by Local Government Code Chapter 133. If no fee is required, the Clerk is not obligated to file any report relating to collection of the fee.

CCP Art. 42.12 Sec. 14(c),(e)

If the conviction is for an offense which requires DNA testing, Article 102.020 of the Code of Criminal Procedure describes the costs and the procedures which must be followed.

When the defendant has completed community supervision, the judge shall discharge the defendant. The judge may set aside the verdict or permit the defendant to withdraw his plea. The judge shall dismiss the accusation, complaint, information or indictment, and the defendant is released from all penalties and disabilities resulting from the conviction. There are two exceptions:

CCP Art. 42.12, Sec. 20(a)

- If the defendant is again convicted of any criminal offense, the proof of conviction or guilty plea shall be made known to the judge; and

CCP Art. 42.12, Sec. 20(a)(1)

- If the defendant applies for a license relating to provision of child-care services under Human Resources Code Chapter 42, the Texas Department of Human Services may consider the fact of previous community supervision in issuing, renewing, denying or revoking a license.

CCP Art. 42.12, Sec. 20(a)(2)

Section 20 does not apply to defendants convicted of certain intoxication offenses (Penal Code Sections 49.04-49.08); defendants required to register as sex offenders (Chapter 62, Code of Criminal Procedure); or defendants convicted of an offense punishable as a state jail felony.

CCP Art. 42.12, Sec. 20(b)

The judge may issue a warrant at any time during the period of community supervision for violation of any of the conditions of community supervision. Upon arrest, the defendant may be confined until he or she can be taken before the judge. A hearing is held to determine if community supervision should be revoked, continued, extended or modified. The defendant has a right to counsel at any such hearing. The court retains jurisdiction to hold a hearing even if the community supervision period has expired, providing the state's attorney has filed a motion to revoke, modify or continue community service before the period expires, and a capias has been issued for the defendant's arrest.

CCP Art. 42.12, Sec. 21(a)(b)(d)

A defendant whose only alleged violation is the failure to pay fees has an affirmative defense if he or she is unable to pay. Such inability must be proved at the hearing. When the defendant's alleged violation is the failure to report, he or she has an affirmative defense if the community supervision officer failed to contact or did not attempt to contact the defendant before starting the violation process.

CCP Art. 42.12, Sec. 21(c) Sec. 24

If community supervision is continued, extended or modified, the judge may impose additional conditions as he or she determines are appropriate.

CCP Art. 42.12, Sec. 22

If community supervision is revoked, the judge may dispose of the case as if there were no community supervision, or he or she may reduce the original term of confinement. However, time spent on community supervision is not considered as any part of the time the defendant will be sentenced to serve. The right to appeal the conviction and punishment is given to the defendant at the time he or she is placed on community supervision. The defendant also has the right to appeal the revocation. If restitution or reparations are owed by the defendant on the date of revocation, the judge enters the amount in the judgment of the case.

CCP Art. 42.12, Sec 23

Special conditions exist for individuals convicted of offenses such as driving while intoxicated, hate crimes, substance abuse, and sex offenses. These special conditions include presentence investigation and postsentence treatment and supervision under Code of Criminal Procedure Section 9A.

2. Deferred Adjudication

A judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. After placing the defendant on community supervision, the judge must inform the defendant of the possible consequences of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony for sexual offenses under Sections 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony for sexual offenses against children described by Section 13B(b) of the Code of Criminal Procedure, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. The judge may impose a fine applicable to the offense and require any reasonable terms and conditions of community supervision. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge must proceed to final adjudication as in all other cases.

CCP Art. 42.12, Sec. 5(a)

If the defendant violates a condition of community supervision, the defendant may be arrested and detained as in any other community supervision revocation case. The defendant will then be entitled to a hearing limited to the question of whether the court should proceed to a formal adjudication on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings continue as if the adjudication of guilt had not been deferred. A court assessing punishment after an adjudication of guilt of a defendant charged with a state jail felony may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed, regardless of whether the defendant has previously been convicted of a felony.

CCP Art. 42.12, Sec. 5(b)

When the defendant's alleged violation is failure to report, he or she has an affirmative defense if the community supervision officer failed to contact or did not attempt to contact the defendant before starting the violation process.

CCP Art. 42.12, Sec. 24

On expiration of a community supervision period, if an adjudication of guilt has not occurred, the proceedings must be dismissed and the defendant discharged. The judge may dismiss the proceedings and discharge the defendant, other than a defendant charged with an offense requiring the defendant to register as a sex offender under Chapter 62, Code of Criminal Procedure, prior to the expiration of the term of community supervision if in the

CCP Art. 42.12, Sec. 5(c)

judge's opinion the best interest of society and the defendant will be served. The judge may not dismiss the proceedings and discharge a defendant charged with an offense requiring the defendant to register under Chapter 62, Code of Criminal Procedure. Except as provided by Section 12.42(g), Penal Code, a dismissal and discharge pursuant to the deferred adjudication statute is not a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense.

CCP Art. 42.12, Sec. 5(d)

It is not permissible to give deferred adjudication to a defendant who has been convicted of driving while intoxicated or involuntary manslaughter due to driving while intoxicated, flying while intoxicated, boating while intoxicated, intoxication assault, and intoxication manslaughter, or for which punishment for controlled substance offenses in certain drug-free zones may be increased under Section 481.134(c), (d), and (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections.

CCP Art. 42.12, Sec. 5(g)

When a defendant is placed on community supervision for an offense under Penal Code sections 21.11, 22.011, 22.021 or 43.25, the judge shall make an affirmative finding of fact, if the judge determines two things: that the defendant was younger than 19 and the victim was at least 13, and the charge was based solely on the ages of the defendant and victim. The affirmative finding of fact must be filed with the papers of the case.

CCP Art. 42.12, Sec. 5(h)

A court retains jurisdiction to hold a hearing and proceed with an adjudication of guilt, even if the period of community supervision imposed has expired, so long as the state's attorney files a motion to proceed with adjudication and a capias is issued for the defendant's arrest prior to the expiration of the community service period.

CCP Art. 42.12, Sec. 5(f)

A record in the custody of a court Clerk regarding a case in which a person is granted deferred adjudication is not confidential.

3. Nondisclosure

Gov't Code Sec. 411.081(d)

Gov't Code Sec. 411.081(e)

Senate Bill 743 83rd Legislature

Senate Bill 107 83rd Legislature

A person may file a "petition for nondisclosure" when he or she (1) has been placed on deferred adjudication; (2) subsequently receives a discharge and dismissal; and (3) satisfies certain other conditions set out in Subsection (e) of Section 411.081 of the Government Code. The petition is to be filed with the Clerk of the court that placed the person on deferred adjudication. Senate Bill 743 provides that a person is not entitled to petition the court under Subsection (d) if the person was placed on the deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for an offense under Section 25.072, Penal Code, or other certain offenses. Senate Bill 107 amends portions of Section 411.081 of the Government Code. The bill provides that a person may file a petition for nondisclosure in person, electronically, or by mail. The petition must be accompanied by payment of a $28 fee to the Clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The bill requires the Office of Court Administration to prescribe a form for the filing of a petition electronically or by mail. The form must provide for the petition to be accompanied by the required fees and any other supporting material determined necessary by the Office of Court Administration, including evidence that the person is entitled to file the petition. The Office of Court Administration must make available on its Internet website the electronic application and printable application form. Each County or District Clerk's office that maintain an Internet website shall include on that website a link to the electronic application and printable application form available on the Office of Court Administration's Internet website. http://www.txcourts.gov/rules-forms/forms.aspx.

The petition for nondisclosure may be filed any time after discharge and dismissal for most misdemeanors. For misdemeanors under Chapter 20, 21, 22, 25, 42 or 46 of the Penal Code, the petition may be filed on or after the second anniversary of discharge and dismissal. If the offense for which the person was placed on deferred adjudication was a felony, the petitioner cannot file for nondisclosure until on or after the fifth anniversary of the discharge and dismissal.

Gov't Code Sec. 411.081(d) (1)-(3)

The petitioner is required to pay the filing fees for a regular civil lawsuit, as well as a special $28 fee, at the time the petition for nondisclosure is filed. The Clerk of a court who collects a fee under subsection (d) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected.

Gov't Code Sec. 411.081(d)(h)

On receipt of a petition for nondisclosure, the court shall provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. The shall hold a hearing before determining whether to issue an order of nondisclosure, except that a hearing is not required if: the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice and the court determines that the defendant is entitled to file the petition and the order is in the best interest of justice. A court may not disclose to the public any information contained in the court records that is the subject of an order of nondisclosure issued under this section. The court may disclose information contained in the court records that is the subject of an order of nondisclosure only to criminal justice agencies for criminal justice or regulatory licensing purposes, to an agency or entity listed in Subsection (i), or to the person who is the subject of the order. The Clerk of the court issuing an order of nondisclosure under this section shall seal any court records containing information that is the subject of the order as soon as practicable after the date the Clerk of the court send all relevant criminal history record information contained in the order or a copy of the order to the Department of Public Safety under Subsection (g).

Senate Bill 107 83rd Legislature

Gov't Code Sec. 411.081(f-1)

Senate Bill 107 83rd Legislature

Gov't Code Sec. 411.081(g3)

Upon the issuance of an order of nondisclosure by the judge, the Clerk must send a copy of the order to:

Department of Public Safety
Crime Records Service
5805 N. Lamar Blvd/P.O. Box 4087
Austin, Texas 78773-0252

The notice is to be sent by certified mail, return receipt requested. However, upon written request of the petitioner, the Clerk may send the notice by secure electronic mail or by facsimile transmission. No additional charge should be assessed for sending a copy of the order to DPS; the $28 fee covers this charge.

Gov't Code Sec. 411.081(g)

C. BOOKKEEPING

Each District Clerk must maintain an accounting system which adequately reports all receipts of money and its subsequent disbursement. Accounting systems vary greatly. It is suggested that the county auditor be consulted regarding any questions about or changes to the accounting system.

D. PASSPORTS

Gov't Code Sec. 51.3031(a)

The United States Department of State, Bureau of Consular Affairs, designates the Clerk of a state court of record as passport acceptance agent. In Texas, this duty is given to District Clerks. This duty is entirely optional with the individual Clerk.

22 USCA Sec. 211a-218

If the District Clerk does perform this duty, his or her role is to accept the applications, and forward them to the U.S. Passport Agency for actual issuance of a passport. The laws governing passports may be found in United States Code, Title 22, Chapter 4. Clerks accepting passport applications should be familiar with the general rules regarding passport issuance and eligibility.

Gov't Code Sec. 51.3031(b) and (c)

A District Clerk may also perform all duties necessary to process an application for a United States passport, including taking passport photographs. To recover the costs of taking passport photographs, a District Clerk may collect a reasonable fee in an amount set by the commissioners court. (This is in addition to the fees set out below.)

Beginning in the summer of 2008, two different types of passports were implemented. The first was a passport "book" that was basically the same as traditional passports. The second was a passport "card" that served to facilitate entry and expedite document processing at U.S. land and sea ports-of-entry when arriving from Canada, Mexico, the Caribbean and Bermuda. The card may not be used to travel by air. The card otherwise carries the rights and privileges of the U.S. passport book.

In July, 2010, the fees for obtaining passports were increased. Adult passports are issued to individuals who are 16 years of age or older. Adult first time applicants must pay a $110 Application Fee to obtain an Adult Passport Book, a $30 Application Fee to obtain an Adult Passport Card, or a $140 Application Fee to obtain both the Adult Passport Book and Card. In addition, there is a $25 Execution Fee. The fees for adults who are renewing their passport are: $110 Renewal Fee for an Adult Passport Book, $30 Renewal Fee for an Adult Passport Card, and $140 Renewal Fee for an Adult Passport Book and Card. Minor passports are issued to individuals who are less than 16 years of age. The fees for minor applicants are the same whether it is a first time application or a renewal. The fee to obtain a Minor Passport Book is $80, the fee for a Minor Passport Card is $15, and the fee for a Minor Passport Book and Card is $95. In addition, there is a $25 Execution Fee.

The District Clerks, as passport acceptance agents, are authorized to charge the Execution Fee of $25.00 for their services for each application for a passport book or a passport card. Passport processing fees (that is, the execution fee and any fee charged for photographs) collected shall be paid to the county treasurer, or to an official who discharges the duties of the county treasurer, for deposit into the general fund of the county.

Applicants with U.S. Government or military authorization for a no-fee passport may not be not charged any fees except the execution fee.

Special conditions apply to passport applications for children under age 14. Both parents or the legal guardian(s), and the minor child, must appear in person. The parents or guardian(s) must provide proof of the child's U.S. citizenship, evidence of the child's relationship to the parents or guardian(s) and parental identification.

If only one parent appears, he or she must also submit one of the following: second parent's written statement consenting to passport issuance for the child; evidence of sole

authority to apply; or written statement, made under penalty of perjury, explaining the second parent's unavailability.

Passports are to be sent for processing to:

Houston Passport Agency
Mickey Leland Federal Building
1919 Smith Street
4th Floor
Houston, Texas 77002-8049

Dallas Passport Agency
Earle Cabell Federal Building
1100 Commerce, Suite 1120
Dallas, Texas 75242

Further information regarding the issuance of passports may be obtained from the State Department's website: http://www.travel.state.gov/passport/passport_1738.html. The National Passport Information Center has a toll-free number: 877/487-2778 for questions regarding passports. Details regarding passport fees and the fees for optional services may be obtained from the State Department's website: http://www.travel.state.gov/passport/fees/fees_837.html.

E. NAME CHANGE

Name changes incident to divorce are covered in Chapter X, Family Law. The procedures covered here apply to name changes for other reasons. Clerks cannot, of course, give legal advice to people seeking a name change. They should, however, be familiar with the procedures to accurately file and process the petitions.

1. Children

A petition requesting a name change is filed in the county in which the child resides. It can be filed by a parent, managing conservator or guardian. The petition must be verified and include the following:

Family Code Sec. 45.001 Sec. 45.002(a)

- the present name and residence of the child;
- the reason a change of name is requested;
- the full name requested for the child;
- whether the child is subject to the continuing exclusive jurisdiction of a court under Chapter 155, Family Code; and
- whether the child is subject to the registration requirements of Chapter 62, Code of Criminal Procedure.

In addition, if the child is 10 years old or older, his or her written consent to the name change must be attached to the petition.

Family Code Sec. 45.002(b)

Citation is issued and served on a parent whose parental rights have not been terminated, on any managing conservator, and on any guardian of the child. Service is accomplished in the same manner as in any other civil case.

Family Code Sec. 45.003

The court will order the name change if it determines the change is in the best

Family Code Sec. 45.004

interest of the child. For a child subject to the registration requirements of Code of Criminal Procedure Chapter 62, the court must also determine that the name change is in the interest of the public. The person petitioning on behalf of the child is required to provide the court with proof that the appropriate local law enforcement authority has been notified of the proposed name change. If the child is subject to the continuing jurisdiction of a court under Chapter 155, Family Code, the Clerk shall send a copy to the central record file as provided in Chapter 108, Family Code.

People who adopt a child in a foreign country may register the adoption order in Texas. (*See*, Chapter X, Section B.5 for more information on foreign adoptions.) A petition for name change may be combined with the petition for registration of a foreign adoption.

Family Code Sec. 162.023(b)

A change of name does not release a child from liability incurred under the child's previous name, or defeat any right the child had in the child's previous name.

Family Code Sec. 45.005

2. Adults

An adult may file a petition requesting a change of name in the county of the adult's place of residence. The petition must be verified and include the following:

Family Code Sec. 45.101

- the present name and place of residence of the petitioner;
- the full name requested for the petitioner;
- the reason the change of name is requested
- whether the petitioner has been the subject of a final felony conviction;
- whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure; and
- a legible and complete set of petitioner's fingerprints, on a format card acceptable to the Texas Department of Public Safety and the Federal Bureau of Investigation.

Family Code Sec. 45.102

The petition must also include, or give an explanation for not including, the petitioner's full name, sex, race, date of birth, driver's license number, social security number, and any criminal history reference number. Also, the petitioner must identify any offense above a grade C misdemeanor for which petitioner has been charged, and, if a warrant was issued or a charging instrument filed, the cause number and the court.

The court will order the name change if it determines the change is to the benefit or in the interest of the petitioner and in the interest of the public, unless the petitioner has been convicted of a felony or is subject to the registration requirements of Code of Criminal Procedure Chapter 62.

Family Code Sec. 45.103(a)

If the petitioner has been convicted of a felony, the name change may be made only if the petitioner has been pardoned; or has received a certificate of discharge from the Texas Department of Criminal Justice, or has completed a court-ordered period of community supervision or juvenile probation, and at least two years has passed since discharge or completion. These requirements are in addition to those of subsection (a).

Family Code Sec. 45.103(a)

Family Code Sec. 45.103(b)

If the petitioner is subject to the registration requirements of Chapter 62 of the Code of Criminal Procedure, the name change may be made only if the petitioner provides the court with proof that he or she has notified the appropriate local law enforcement authority

Family Code Sec. 45.103(c)

of the proposed name change. This requirement is in addition to those of subsection (a).

A change of name does not release a person from liability incurred in that person's previous name or defeat any right the person had in the person's previous name.

Family Code Sec. 45.104

A person whose name is changed under Family Code Section 6.706 or Section 45.105 may apply to the Clerk of the court ordering the name change for a change of name certificate. This certification is a one-page document that includes the name of the person before the change of name was ordered, the name to which the person's name was changed by the court, the date on which the name change was made, the person's social security number and driver's license number, if any, the name of the court in which the name change was ordered, and, the signature of the Clerk of the court that issued the certificate. An applicant for a change of name certificate shall pay a $10 fee to the Clerk of the court for issuance of the certificate. A change of name certificate issued under Family Code Section 45.106 constitutes proof of the change of name of the person named in the certificate.

Family Code Sec. 45. 106

F. TESTIFYING IN DISTRICT COURT

The Clerk, at times, may be called upon to testify in court as to some aspect of the Clerk's records and minutes in a case. The testimony usually relates to the presence, contents, and date of filing of one or more of the instruments filed for record with the Clerk or child support payments which have been made through the registry of the court.

G. INQUESTS

Inquests are conducted by justice courts in counties that do not have a medical examiner's office or that are not part of a medical examiner's district, as authorized under Article 49.25 of the Code of Criminal Procedure. The District Clerk has no role in those counties that have a medical examiner's office or are part of a medical examiner's district.

CCP Art. 49.02

In counties where justices of the peace conduct inquests, the District Clerk has no role in the actual proceedings. The justice of the peace preserves all tangible evidence accumulated in the course of an inquest that tends to show the cause of death or the identity of the person who caused the death.

CCP Art 49.17

At the conclusion of an inquest, the justice court may deposit the evidence with an appropriate law enforcement agency to be stored in its property room. The justice court also has the option to deposit all evidence with the District Clerk for safekeeping subject to the order of the court.

H. PAYMENTS TO COUNTY TREASURER

A county officer (this includes the District Clerk) is directed by statute to deposit any funds received with the county treasurer on or before the next regular business day after the date on which the funds are received. If this deadline is not met, the county official is required to "deposit the funds, without exception, on or before the fifth business day after the day on which the funds are received." However, in a county with fewer than 50,000 inhabitants, the commissioners court may extend the period during which the funds must be deposited with the county treasurer, but the period may not exceed 15 days after the date the funds are received. In determining the population of a county for purposes of this provision, a commissioners court may use any reasonable method. The phrase "15 days" means calendar days, not business days.

Loc. Gov't Code Sec. 113.022

AG Op. JM-397 (1985 SB 373 (82nd Leg.))

County officers who collect fees for the county must deposit the funds with the county treasurer or in the county treasury as required by Local Government Code Chapter 113 or 133, absent a specific statute providing for a different disposition.

AG Op. GA-0636

I. REPORTING REQUIREMENTS

The District Clerk reporting requirement list identifies the various reporting requirements imposed upon District Clerks. The list can be viewed at
http://www.txcourts.gov/media/96889/DistClerkReportingReqs.pdf
It includes the entity to which the report must be made, the statutory authority, and the address to which to send the report.

J. NONRESIDENT ATTORNEYS

Gov't Code Sec. 82.0361

Clerks should be aware of the law permitting a nonresident attorney to participate in a Texas court proceeding. A nonresident attorney is defined as a person who resides in and is licensed to practice law in another state but who is not a member of the State Bar of Texas. A nonresident attorney who participates in a Texas court appears *pro hac vice*. This phrase refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted to the jurisdiction temporarily for the purpose of participating in a particular case.

A nonresident attorney who wishes to participate in a Texas court proceeding must first pay a fee of $250 to the Texas Board of Law Examiners for each case in which he or she requests to participate. Then the attorney must file a motion with the applicable court requesting permission to participate in the particular proceeding in that court. The attorney must provide the court with proof of payment of the $250 fee.

CHAPTER 15

REQUESTS FOR RECORDS

A. INTRODUCTION

District Clerks will often receive requests to inspect or copy records. In general, records held by District Clerks are court case records.

B. REQUESTS FOR COURT CASE RECORDS

District Clerks frequently receive requests for records related to proceedings in the courts they serve. For example, a Clerk may receive a request to see the file in a civil case. Another possible request might be for a copy of a particular criminal felony case. The requests a Clerk may receive for court case records are as wide and varied as the universe of documents that may be filed in any court proceeding handled by a district court.

A District Clerk holds court case records on behalf of the judges of the courts served by the Clerk. Therefore, court case records maintained by District Clerks are records of the judiciary.

A.G. Op. DM-166 (1992) H-826 (1976)

The Public Information Act (PIA) does not apply to records of the judiciary. The Texas Legislature has expressly excluded the judiciary and its records from the PIA. Accordingly, when dealing with a request for court case records, District Clerks need not concern themselves with the PIA. The PIA simply is not relevant to a request for court case records.

Gov't Code Sec. 552.003(1)(B)

Similarly, Rule 12 of the Texas Rules of Judicial Administration does not apply to court case records. Rule 12 deals only with public access to "judicial records." Like court case records, judicial records are records of the judiciary. But the two types of records are entirely separate. A record cannot be both a court case record and a judicial record. A judicial record is a record made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. A record that is filed in connection with any matter that is or has been before a court would be a record pertaining to a court's adjudicative function and would not be a judicial record. Examples of judicial records might include a judge's calendar, a court's security plan, personnel records, and written materials obtained in connection with an educational seminar.

Texas Rules of Judicial Admin. Rule 12.2(d)

> ***NOTE:*** *Judicial records are almost always maintained by judges themselves and not by Clerks. If a District Clerk receives a request for a judicial record, the Clerk should refer the requestor to the relevant judge.*
>
> *Correspondingly, a judge may receive a request for court case records. Because court case records are maintained by Clerks, the judge should refer the person making such a request to the Clerk.*

The fact that neither the PIA nor Rule 12 apply to requests for court case records does not mean there are no laws controlling requests for court case records. Many statutes address the right of access to court case records. Public access to certain court case records is controlled by judicial rules such as the Texas Rules of Civil Procedure. If there are no applicable statutes or rules regarding the release of a particular type of court case

Gov't Code Sec. 552.0035

record, then access to such a record is controlled by common law.

1. General Rule – Court Case Records are Open to the Public

a. Statutes Controlling Access to Court Case Records

CCP Art. 15.26
CCP Art. 18.01(b)

Certain statutes serve to make particular types of documents public information. The Texas Legislature has specifically stated that arrest warrants and affidavits in support thereof are "public information." The Clerk of the magistrate who issued the arrest warrant is required to make a copy of both the warrant and the supporting affidavit available for public inspection. Similarly, affidavits in support of search warrants are public information (once the warrant is executed) that the magistrate's Clerk is required to copy and make available for public inspection. The statute does not say that search warrants themselves are public information. But this does not mean the public should not be granted access to search warrants under other law.

HB 1573 from the 82nd Legislature amended Article 20.22 of the Code of Criminal Procedure, which deals with presentment of indictments. This article provides, "(a) The fact of a presentment of indictment by a grand jury shall be entered in the record of the court, if the defendant is in custody or under bond, noting briefly the style of the criminal action, the file number of the indictment, and the defendant's name. (b) If the defendant is not in custody or under bond at the time of the presentment of indictment, the indictment may not be made public and the entry in the record of the court relating to the indictment must be delayed until the capias is served and the defendant is placed in custody or under bond."

CCP Art. 42.12, Sec. 5(f)

The fact that a criminal defendant is granted deferred adjudication does not serve to make his or her criminal file confidential. Rather, the Code of Criminal Procedure affirmatively states that "[a] record in the custody of the court Clerk regarding a case in which a person is granted deferred adjudication is not confidential."

Family Code Sec. 160.633

Papers and records in proceedings to adjudicate parentage (*i.e.*, paternity suits) are available for public inspection.

b. Court Rules Controlling Access to Court Case Records

TRCP 76a

Clear Channel Communications v. United States Auto Ass'n, 195 S.W.3d 129 (Tex. App.—San Antonio 2006, no pet.).

Rule 76a of the Texas Rules of Civil Procedure states that court case records filed in connection with any matter (other than documents filed in actions originally arising under the Family Code, documents filed with a court in camera solely for the purpose of obtaining a ruling on their discoverability, and documents to which access is otherwise restricted by law) before any civil court are presumed to be open. This presumption may be overcome, and the court case records may accordingly be sealed, only in certain limited situations in which the judge finds that (1) a specific, serious and substantial interest clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and (2) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. The sealing of court records without compliance with Rule 76a is improper.

TRCP 76

Attorneys have a special right of access to the records of cases in which they are involved. Rule 76 of the Texas Rules of Civil Procedure states that "[e]ach attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested."

c. Common Law Principles Controlling Access to Court Records

In the absence of a statute or court rule, access to court case records is controlled by common law. The United States Supreme Court has observed that the courts of this country recognize a general right to inspect and copy court case records. The right is not absolute, however. The public's right to inspect and copy court case records is subject to the court's inherent power to control access to its records. But a court's power to limit access to its records ends when the court no longer has jurisdiction over the particular case.

AG Op. DM-166 (1992)

Nixon v. Warner Communications, 435 U.S. 589 (1978)

Ashpole v. Millard, 778 S.W. 2d 169 (Tex. App. – Houston [1st Dist.] 1989, no writ).

2. Exceptions to the General Rule that Court Case Records are Open

There are a number of statutes that serve to restrict public access to court case records. Rule 76a specifically states that the court records presumed to be open do not include "documents in court files to which access is otherwise restricted by law." These laws which serve to create "exceptions" to the general rule of openness are delineated below.

TRCP 76a

a. Exception – Juvenile Case Records

The records of a child who is a party to a proceeding under Title 3 of the Family Code (*i.e.*, juvenile case records) are open to inspection or copying only by the following:

Family Code Sec. 58.007

HB 2862 (83rd Leg.) Permits copying rather than just inspection

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency (*i.e.*, an agency that has custody or control over juvenile offenders);
- an attorney for a party to the proceeding;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

If a court orders that the records in a particular juvenile case are to be sealed, the records are open to inspection only upon an order of the juvenile court and are to be inspected only by those persons named in the order.

Family Code Sec. 58.003(h)

> ***NOTE:*** *Statistical data collected by the Texas Juvenile Probation Commission is not subject to a sealing order under Family Code Section 58.003.*

Family Code Sec. 58.003(g-1) HB 2862 (83rd Leg.)

In certain circumstances, the Department of Public Safety will certify to the juvenile court that the records relating to a person's juvenile case are subject to "automatic restriction of access." In 2011 HB 961 (82nd Legislature) amended Section 58.203(a), Family Code, by lowering the threshold age from 21 to 17, and by eliminating Subsection (4). In 2013 HB 2862 further amended Section 58.203. In order to be eligible for

Family Code Sec. 58.203

HB 2862 (83rd Leg.)

restricted access, the subject must be 17, must not have been adjudicated under the determinate sentence act or have been certified to criminal court.

Family Code Sec. 58.204

Family Code Section 58.204 was amended during the 2013 83rd Legislature by two bills – HB 694 and HB 2862. The changes made by these bills are not the same and the changes did not go into effect at the same time.

HB 694 (83rd Leg.)

The amendment made by HB 694 became effective on June 14, 2013. A new subsection (b)(3) was added which provides that the Texas Juvenile Justice Department may permit access to the information in the juvenile justice information system relating to the case of an individual with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

HB 2862 (83rd Leg.

The amendments made by HB 2862 became effective on September 1, 2013. New Subsections (b)(3), (b)(4), and (b)(5) were added. The Texas Juvenile Justice Department may permit access to the information in the juvenile justice information system relating to the case of an individual: by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records; with the permission of the juvenile court at the request of the person who is the subject of the records; or with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit.

Family Code Section 58.207 was also amended during the 2013 83rd Legislature by HB 694 and HB 2862. The changes made by these bills to this section are also not the same and, as stated above, the changes did not go into effect at the same time.

HB 694 (83rd Leg.))

HB 694 adds a new subsection (c) which provides that notwithstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.

HB 2862 (83rd Leg.)

HB 2862 adds new subsections (c) and (d). Subsection (c) states that Subsection (b) does not apply if the subject of an order issued under Subsection (a)(1) is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department or the agency has received notice that the records are not subject to restricted access under Section 58.211. Subsection (d) states that notwithstanding Subsection (b) and Section 58.206(b), with the permission of the subject of the records, an agency listed in Subsection (a)(1) may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military forces or the United States military forces, an agency may provide access to juvenile records that have not been restricted under Subsection (a).

Upon receiving such a certification, the juvenile court shall order that records maintained by the Clerk of the juvenile court may only be accessed:

- by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; and
- for research purposes, by the Texas Juvenile Justice Department.

Family Code Sec. 58.204

Accordingly, Clerks are to follow the court's order and allow access only as detailed immediately above.

Family Code Sec. 58.210

NOTE: *The automatic restriction of access described above is in addition to the sealing of juvenile records. A person who is the subject of records to which access has automatically been restricted is entitled to access to the records for the purpose of preparing and presenting a motion to seal or destroy the records.*

Family Code Sec. 58.211

NOTE: *Restricted access may be rescinded under certain circumstances. The Department of Public Safety notifies the juvenile probation department, which in turn is responsible for notifying the entities that maintain juvenile records, of the rescission.*

b. Exception – Juror Information Sheets in Criminal Cases

CCP Art. 35.29

SB 270 (83rd Leg.)

Personal information about a person who serves as a juror in a criminal case such as the juror's address, telephone number, social security number, and driver's license number is confidential and may not be disclosed absent an order of the court in which the juror served. Senate Bill 270 amended the Code of Criminal Procedure to provide an exception to the prohibition against releasing personal information about a juror collected during the jury selection process by authorizing a defense counsel to disclose that information to successor counsel representing the same defendant in a habeas corpus proceeding in a death penalty case without application to the court or a showing of good cause.

AG Op. No. GA-0422 (2006).

But jury lists are not confidential. Petit jury lists in a criminal matter are not the type of information made confidential by Article 35.29. That statute does not impose a duty on a Clerk or a judge to keep jury lists confidential (after the point in time when the case is called for trial and the names of those summoned in the case as jurors have been called).

c. Exception – Written Jury Summons Questionnaires

The information contained in a written jury summons questionnaire is confidential. The questionnaire must now notify a person that if the person states that the person is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship. (HB 174 amendment to Section 62.0132, Government Code.) The information contained in a completed questionnaire may be disclosed only to:

- a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;
- court personnel; and
- a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror.

Gov't Code Sec. 62.0132

d. Exception – Exceptions Applicable only in a County with a Population of 3.4 Million or More

Family Code Sec. 6.411

If a county has a population of 3.4 million or more, the pleadings and documents filed in a court for the dissolution of marriage are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing suit, whichever date is sooner.

If a county has a population of 3.4 million or more, an application for a protective order is confidential and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

Family Code Sec. 82.010

If a county has a population of 3.4 million or more, the pleadings and documents filed in a suit affecting the parent-child relationship are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Family Code Sec. 102.0086

e. Exception – Suits for Adoption

The records concerning a child maintained by the Clerk after entry of an order of adoption are confidential. No person may access the records except for good cause under an order of the court that issued the order of adoption.

Family Code Sec. 162.022

f. Exception – Sealed Records

Almost all civil court case records in cases that do not arise under the Family Code may be sealed in certain circumstances and pursuant to certain detailed procedures. (Court orders may not be sealed. However, certain information such as the identity of a sexual assault victim may be ordered to be redacted from an otherwise open judgment.) Court records may be sealed only upon a party's written motion. The motion must be open to public inspection. A motion to seal records must be decided by written order. The written order is open to the public.

TRCP 76a

Fox v. Anonymous, 869 S.W. 2d 499 (Tex. App.-San Antonio 1993, writ denied)

Courts may also seal records in certain cases originating under the Family Code. Specifically, courts may order the sealing of a file in a suit for termination and in a suit requesting an adoption.

Family Code Sec. 162.021

Courts are required to seal records concerning orders issued under Chapter 144 of the Civil Practice and Remedies Code. (Chapter 144 deals with certain court orders dealing with particular former mental health patients.)

Civ. Prac. & Rem. Code Sec. 144.005

The law is silent as to the exact meaning of sealing a record. However, the general understanding appears to be that a judge's order that a Clerk seal a record requires something more than merely not making the record publicly accessible. The recommended practice is that the Clerk actually place a seal around the record or records in question and physically place the records in a special area. The physical seal is not to be broken until the records are ordered to be unsealed.

g. Exception – Parental Notification Case Records

As noted in Chapter 12, all court documents pertaining to a minor's application for judicial approval to undergo an abortion are confidential and privileged. Not only are the documents confidential but the Clerk may not divulge to anyone (except essential court personnel) that the minor was ever in the Clerk's office, was ever pregnant and ever sought to have an abortion. Even the disclosure of the particular trial court in which a proceeding was held is in violation of the rule of confidentiality.

Family Code Sec. 33.003(k)

SCR 1.3
SCR 1.4

In re Jane Doe, 19 S.W. 3d 249 (Texas 2000)

h. Exception – Forms and Information Provided to Clerk so that Interest Earned on Registry Funds can be Reported to the Internal Revenue Service

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

Local Gov't Code Sec. 117.003

i. Exception - Expunction Proceedings

Generally, the records and files of expunction proceedings are not public record and may not be inspected by anyone other than the person who is the subject of the expunction order. There are two exceptions to this rule:

CCP Art. 55.02(5)(c)

- If the basis for the expunction was an entitlement under Article 55.01(d) of the Code of Criminal Procedure.
- If the order of expunction provides that the records are to be retained pursuant to Article 55.02(4) (a) of the Code of Criminal Procedure.

The District Clerk must obliterate all public references to the expunction proceeding and must maintain the files or other records in an area not open to inspection.

C. REDACTION OF INFORMATION FROM RECORDS

Several laws serve not to block public access to particular types of records, but rather to prohibit the release of certain information contained within records that are open to the public. This section explores these laws.

1. Redaction Process

To redact information from a document means to remove confidential references from a document. There is no specific statute detailing the proper method of redacting information from a document. The general and recommended practice, however, is to make a copy of the original document and remove the confidential references from the copy of the document. The original document is to remain unaltered.

The confidential references are usually removed from the copy of the document by blackening the areas of the copy in which the confidential references are situated. Sometimes the confidential references can still be ascertained even after the blackening of the relevant area of the document. If this is the case, a copy of the altered copy should be made so that the references definitely cannot be ascertained. The altered copy is the document that is presented to the requestor of the document in satisfaction of his or her request. The requestor does not view the original document.

2. Information Contained in Victim Impact Statements

In 2003, the Texas Legislature enacted Section 552.1325 of the Government Code which makes confidential certain information that is filed with a court and that is contained in a victim impact statement (or was submitted for purposes of preparing a victim impact statement). Specifically, the name, social security number, address, and telephone number of a crime victim is confidential. Additionally, any other information that would identify or tend to identify a crime victim is not to be disclosed. Accordingly, any documents (not just victim impact statements) that contain this type of confidential information must have the confidential information redacted from the documents prior to any release of the documents. This rule applies to criminal judgments. Crime victim

Gov't Code Sec. 552.1325

AG Op. NO. GA-220 (2004)

information contained in a criminal judgment must be redacted before the criminal judgment can be made public.

3. Biometric Identifiers

Gov't Code Sec. 560.001

A biometric identifier is a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A District Clerk who possesses an individual's biometric identifier, whether as part of a court case record or public record, may not disclose the identifier to another person unless:

- the individual consents to the disclosure;
- the disclosure is required or permitted by a federal statute or a Texas statute other than the Public Information Act; or
- the disclosure is made to a law enforcement agency for a law enforcement purpose.

Gov't Code Sec. 560.002

Gov't Code Sec. 560.003

A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552 of the Government Code.

4. Protective Orders

Family Code Sec. 85.007

Generally, the information contained in protective orders is open to the public. However, in response to a request from the person protected by an order (or from a member of the family or household of the person protected by an order), the court may exclude from a protective order the address and telephone number of the following:

- a person protected by the order (in which case the order shall state the county in which the person resides;
- the place of employment or business of a person protected by the order; or
- the child-care facility or school a child protected by the order attends or in which the child resides.

If the court grants the request for confidentiality, the court will order the Clerk to strike the information from the public records of the court and maintain a confidential record of the information for use only by the court.

5. Order (Writ) of Withholding

Family Code Sec. 8.001
Family Code Sec. 8.152

An order (writ) of withholding is a document issued by the Clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance. An order of withholding must state, among other things, the name, address and social security number of both the obligor and the obligee. Upon the request of an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee 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. If the court grants the obligee's request, the court shall order the Clerk to strike the address and social security number from the order of withholding and maintain a confidential record of the obligee's address and social security number to be used only by the court.

6. E-Mail Addresses

Gov't Code Sec. 552.137

The law described here applies only to public records and does not apply to court case records. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body (including the District Clerk) is confidential. However, the e-mail address may be disclosed if the member of the public affirmatively assents to the release of the e-mail address.

An e-mail address is not confidential if the e-mail address is:

- provided by a person who has a contractual relationship with the governmental body or by the vendor's agent;
- provided by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided in the course of negotiating the terms of a contract or potential contract; or
- provided on a letterhead, coversheet, printed document, or other document made available to the public.
- Provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of the Government Code, or receiving orders or decisions from a governmental body.

The District Clerk may disclose an e-mail address to another governmental body or to a federal agency.

Any record that contains a confidential e-mail address must have the e-mail address redacted from the record before the record may be released to the public.

7. Social Security Numbers

Federal law provides as follows:

> Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

42 U.S.C. Sec. 405(c)(2)(viii)(I)

After conducting extensive research on this issue, OCA advises Clerks of our belief that 42 U.S.C. § 405(c)(2)(C)(viii)(I) does <u>not</u> apply to court Clerks because court Clerks do <u>not</u> meet the statutory definition of "authorized persons" who obtain or maintain social security numbers "pursuant to any provision of law enacted on or after October 1, 1990." Accordingly, this federal law does not appear to require District Clerks to keep social security numbers confidential.

Gov't Code Sec. 552.147

On written request from an individual or an individual's representative, a Clerk must redact all but the last four digits of the individual's social security number from information maintained in the Clerk's records. This includes the District Clerk's court

case records. In this instance, the word "redact" really means "delete." In other words, the actual original record will be altered so as not to include the first five digits of the individual's social security number. There is an exception that states that this redaction is not to be performed if "another law requires a social security number to be maintained in a government document." For example, Section 8.152 of the Family Code requires Clerks to maintain a confidential record of a child support obligee's address and social security number that is contained in an order of withholding.

Family Code Sec. 8.152

D. RESPONDING TO RECORDS REQUESTS

The Public Information Act (PIA) details relevant procedures in responding to records requests. These procedures are directly relevant only to requests for records to which the PIA is applicable. However, the procedures comprise a helpful (but not mandatory) guideline for responding to requests for court case records.

1. Time in which to Respond to Records Requests

In response to a request for records that are open to the public, the records should be produced promptly. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

Gov't Code Sec. 552.221

If the requested records are unavailable at the time of the request because the record is in active use or in storage, the Clerk would be well-advised to put this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be made available for inspection or duplication.

2. Permissible Inquiries in Response to Records Requests

In regard to requests for records, the District Clerk should not make any inquiry of a requestor except to establish proper identification or to clarify the request. If a large amount of information has been requested, the Clerk may discuss with the requestor how the scope of the request might be narrowed. The Clerk should not make inquiry as to the purpose for which the information will be used. These rules are also good guidelines for records that are open under other statutes, rules or common law principles.

Gov't Code Sec. 552.222

The Clerk should treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Gov't Code Sec. 552.223

3. Providing Copies of Requested Records

A District Clerk should not allow requestors to remove original records from the Clerk's office. Clerks should provide copies of requested records within a reasonable period of time following the request.

Gov't Code Sec. 552.226
Gov't Code Sec. 552.228

If the requested information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. The Clerk should provide a copy in the requested medium if:

- the Clerk has the technological ability to produce a copy of the requested information in the requested medium;
- the Clerk is not required to purchase any software or hardware to accommodate the request; and

- provision of a copy of the information will not violate the terms of any copyright agreement between the Clerk (or county) and a third party.

If the Clerk is unable to comply with a request to produce a copy of information in a requested medium, the Clerk should provide or a copy in another medium that is acceptable to the requestor.

E. FEES IN CONNECTION WITH RECORDS REQUESTS

Gov't Code Sec. 552.265

The charge for providing a paper copy of records made by a District Clerk's office shall be the charge provided by Chapter 51 of the Government Code or other applicable law.

1. Fees for Copies of Records on Paper

a. Certified Copies Generally

Often, District Clerks are asked to provide not only a copy of a particular record but a "certified copy" of the record. A certified copy is a duplicate of an original document that is certified by the District Clerk as an exact reproduction of the original document.

Gov't Code Sec. 51.318(b)(7) HB 627 SB 1233 (82nd Leg.)

The fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the District Clerk's office, including certificate and seal, for each page or part of a page, is not to exceed $1.00. The Clerk is not to charge any additional amount for labor, materials or overhead no matter how many pages are in the document.

Gov't Code Sec. 101.0611

The Clerk is to collect the fee at the time the copy is requested or at the time the copy is provided.

HB 410 (83rd Leg.)

In 2013, House Bill 410 amended the Government Code to require, rather than authorize, the commissioners court of each county in the Second Court of Appeals District to establish an appellate judicial system to assist the court of appeals for the county with the processing of appeals filed with the appellate court and to defray costs and expenses incurred in the operation of the appellate court. In order to fund the system, the bill makes a $5 court costs fee mandatory for each civil suit filed in a county court, statutory county court, statutory probate court, or district court in the county. The bill also establishes requirements for the administration of the system fund. The new fee amount is effective January 1, 2014, although the other provisions in the bill are effective September 1, 2013.

b. Noncertified Copies Generally

Gov't Code Sec. 51.318(b)(8)

The fee for issuing a noncertified copy of a record is not to exceed $1.00 per page or part of a page. As is the case with certified copies, the Clerk is not to charge any additional amount for labor, materials or overhead. The fee must be paid at the time the order for the noncertified copy is placed or at the time the copy is provided.

2. Fees for Copies of Records on a Format Other Than Paper

1 TAC §70.10

A District Clerk who provides a copy of a court case record in a format other than paper is not bound to charge any particular amount. However, the District Clerk may wish to charge the amount set out by the attorney general in rules contained in the Texas Administrative Code as shown below:

- diskette $ 1.00
- magnetic tape actual cost

- data cartridge actual cost
- tape cartridge actual cost
- CD
  Rewritable (CD-RW) $ 1.00
  Non-rewritable (CD-R) $ 1.00
- Digital video disk (DVD) $ 3.00
- JAZ drive actual cost
- other electronic media actual cost
- VHS video cassette $ 2.50
- audio cassette $ 1.00
- oversize paper copy $ .50
  (excluding maps or photos)
- Specialty paper actual cost
  (e.g., Mylar, blueprint, map, photo)

These charges are to cover the cost of materials only. The rules state that personnel costs involved in processing the request for non-paper copies of records may be charged at a rate of $15 per hour per person. However, the rules state that if the services of programming personnel were required to comply with the request, then those programming personnel charges should be billed at the rate of $28.50 per hour.

Whenever any personnel charge is applicable to a request for non-paper copies of records, the Clerk may also wish to include direct and indirect overhead costs in the charges. These charges may cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The rules state that the overhead charge should be 20 percent of any labor charge.

If the Clerk already has the requested information on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy should not exceed the cost of its reproduction. If no copies are available and the information on the microfiche or microfilm can be released in its entirety, then the Clerk should make a copy of the microfiche or microfilm and should not exact a charge that is greater than the cost of reproduction. If the Clerk cannot reproduce microfiche or microfilm in-house, then the Clerk may wish to charge the actual costs of having the reproduction made commercially.

The Clerk may also wish to charge additional fees in connection with providing non-paper copies of requested documents such as remote document retrieval charges, computer resource charges, miscellaneous supplies charges, and postal or shipping expenses. Standard charges are detailed in Title 1, Texas Administrative Code, Chapter 70.

Gov't Code Sec. 552.271

If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the District Clerk may wish to charge for the cost of making a photocopy of the page from which confidential must be edited.

APPENDIX A
(Revised December 2013)

TEXAS ATTORNEY GENERAL OPINIONS, LETTER OPINIONS AND OPEN RECORD DECISIONS

In most cases, an opinion that is designated by the initials of the attorney general addresses issues that are or may be of interest to persons throughout the state. A letter opinion generally addresses issues that are local in nature or that affect the interests of a particular person or group. An Open Record Decision refers to a decision issued in response to an inquiry related to open records requests. The "LO," "ORD," "ORL," and "OR" designations do not mean that a document is any less authoritative than one denominated by the particular attorney general's initials.

On January 4, 1999, Attorney General John Cornyn discontinued the practice of issuing letter opinions. All attorney general opinions are now issued under the Attorney General's initials; i.e., Attorney General Greg Abbott's opinions would be named GA-0001, GA-0002, etc.

This manual does not include copies of the Attorney General opinions cited. There are two ways to obtain a copy of an opinion:

- You may obtain an electronic copy directly from the Office of the Attorney General's web site (www.oag.state.tx.us). All opinions issued since January 4, 1939, all letter opinions issued since January 21, 1953, and all open records decisions issued since July 20, 1973, are online.
- If you do not have internet access, or if you would like a copy of an opinion that is not online, you may call the Opinions Library at the Attorney General's Office at 512/936-1730 and request that they fax or mail you a copy.

E-MAIL NOTIFICATION OF NEWLY ISSUED OPINIONS

You may subscribe to the Notification of Opinions Subscription list to receive an e-mail informing you of newly issued Attorney General Opinions as soon as they are posted to the web page. The e-mail will include a link to the newly issued opinion as well as a brief summary of that opinion.

If you wish to subscribe, please send an e-mail to webmaster@oag.state.tx.us. Type "Notification of Opinions" for the subject heading. Please be sure to include all of the following information in your email:

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Once your request is processed, you will receive an e-mail confirming your subscription to the list.

To unsubscribe to the list, please send an e-mail to webmaster@oag.state.tx.us with the words "UNSUBSCRIBE OPINIONS" in the subject heading.

WHO CAN REQUEST AN ATTORNEY GENERAL OPINION?

Sections 402.042 and 402.043 of the Government Code set out the state and local officials who are authorized to request formal Attorney General opinions on questions of law. The Attorney General is prohibited by statute from giving a written opinion to anyone other than an authorized requestor. Authorized requestors are:

- the Governor
- the head of a department of state government
- the head or board of a penal institution
- the head or board of an eleemosynary institution
- the head of a state board
- a regent or trustee of a state education institution
- a committee of a house of the Texas Legislature
- a county auditor authorized by law
- the chairman of the governing board of a river authority

The Attorney General also advises a district or county attorney in certain instances in which the State is interested and certain requirements are met. In addition, the Attorney General advises the proper authorities in regard to the issuance of bonds that by law require the Attorney General's approval.

LEGAL EFFECT OF OPINIONS

The appellate courts of Texas have consistently held that attorney general opinions, although not binding on the courts, are entitled to "great weight." An opinion of the Attorney General should be deemed to state the law correctly, unless or until the opinion is modified or overruled by statute, judicial decision, or subsequent attorney general opinion.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
C-637 (1966)	Whether an appropriation could be made for the payment of certain witness fees, if the claims therefore are not filed in the Comptroller's Office within 12 months from the date they became due, under the provisions of Art. 35.27, Vernon's Code of Criminal Procedure, and related questions.
DM-26 (1991)	Fees payable to county and district clerks in eminent domain cases and when fees are payable by state agency.
DM-34 (1991)	Division of authority over the selection of prospective jurors between a district clerk and a jury administrator.
DM-166 (1991)	Whether charges for uncertified copies of records of judiciary in district clerk's office are set by section 9(d) of article 6252-17a, V.T.C.S.
DM-174 (1992)	Authority of county clerk to charge fees under section 31.008, Civil Practice and Remedies Code, and related questions.
DM-222 (1993)	Whether a child support obligee may modify a child support order by filing with a district clerk a limited power of attorney authorizing a corporation to receive child support payments paid through the district clerk's office along with a request that the clerk send the child support payments to that corporation.
DM-282 (1994)	Whether a county must maintain a special and separate account for cash bail bond funds that the county receives pursuant to article 17.02 of the Code of Criminal Procedure and related questions.
DM-283 (1994)	Whether section 291.007 of the Local Government Code authorizes a county commissioner's court to set a security fee of not more than five dollars to be taxed as court costs in each civil case filed in a probate court, as well as in a county court, county court at law, and district court, and related questions.
DM-295 (1994)	Whether the district clerk filing fees provided for in section 51.317 of the Government Code apply to the filing of an application for a pre-indictment writ of habeas corpus, and related questions.
DM-296 (1994)	Whether a district clerk may honor a change of address request from a child support obligee to remit child support payments to the care of a collection agency.
DM-342 (1995)	Whether witness fees under section 22.001, Texas Civil Practice and Remedies Code, must be paid to a person who is subpoenaed to appear and give testimony at a location other than the courthouse.
DM-348 (1995)	Validity and constitutionality of section 117.002 of the Local Government Code, which concerns the turnover of abandoned funds held by the county of district clerk to the State of Texas.
DM-382 (1996)	Whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable; whether deferred collection of the fee for service of civil process by a sheriff or constable constitutes a loan of credit under article III, section 52, or article XI, section 3, of the Texas Constitution.
DM-407 (1996)	Whether a trial judge who, in accordance with the Code of Criminal Procedure article 42.12, places a defendant on community supervision may allocate money the defendant is to pay as fees, costs, and fines as the judge chooses and related questions.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
DM-459 (1997)	Whether the State of Texas is exempted from paying filing fees and other court costs prior to judgment; reconsideration of Attorney General Opinion MW-447A (1982).
DM-464 (1997)	Constitutionality of SB 1417, Acts 1997, 75th Leg., R.S., ch. 1327, and related questions. Time payment fee.
GA-0220 (2004)	Whether a standard felony judgment form should contain the name and address of a crime victim.
GA-0396 (2006)	Whether the state may continue to collect fines and court costs where no motion to adjudicate has been filed and the term of deferred adjudication has expired.
GA-0398 (2006)	Eligibility of former and retired judges to sit by assignment.
GA-0404 (2006)	Whether the seal placed on certified copies of documents recorded in the county clerk's office must be raised.
GA-0413 (2006)	Payment of uncollected fines, fees and court costs by defendants who have been administratively released from community supervision.
GA-0422 (2006)	Confidentiality of grand and petit jury lists.
GA-0436 (2006)	Whether a county or district clerk is required to charge an administrative fee for the return of funds deposited with the clerk as a cash bail bond; reconsideration of Attorney General Opinion JC-1063 (1999).
GA-0446 (2006)	Conflict of interest disclosure requirements for local government officers and persons who contract with local governmental entities.
GA-0461 (2006)	Whether an indigent parent is entitled to receive a free transcript of hearings and depositions in cases where the state initiates proceedings under chapter 262 of the Family Code.
GA-0486 (2006)	Whether the $37 filing fee authorized by House Bill 11, 79th Legislature, Second Called Session, may be collected in bond forfeiture matters.
GA-0488 (2006)	Whether a part-time deputy district clerk may be simultaneously employed by a private attorney.
GA-0489 (2006)	Amendments made in 2003 to Family Code chapter 107 and the circumstances related to those changes in which a county may pay for the services of an amicus attorney, attorney ad litem, or guardian ad litem appointed in a private suit affecting the parent-child relationship.
GA-0491 (2006)	Whether a district clerk must collect filings fees under both section 133.151 and section 133.152 of the Texas Local Government Code.
GA-0503 (2007)	Whether a county commissioner’s court may delegate nonstatutorily assigned duties to other elected county officials.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
GA-0515 (2007)	Whether a bail bond may be accepted in a Texas county for a person jailed in another state.
GA-0519 (2007)	Release and redaction of social security numbers under the Public Information Act, section 552.147 of the Government Code.
GA-0521 (2007)	Whether funds collected by a county clerk as part of the records management and preservation fee may be used to purchase certain archival records.
GA-0566 (2007)	Authority of the El Paso County District or County Clerk to establish an online electronic database accessible to the public.
GA-0569 (2007)	Whether certain county officers and employees may hold additional county positions.
GA-0588 (2007)	A law enforcement agency's authority concerning money seized as contraband pending a court's rendition of final judgment.
GA-0620 (2008)	Procedures that a commissioner's court must follow in the annual budget process in regard to salaries and personal expenses for each elected county and precinct officer.
GA-0636 (2008)	Whether county officials who collect funds for the county may establish individual bank accounts in their own names.
GA-0638 (2008)	Whether, without the approval of the commissioner's court, a county clerk may supplement her deputies' salaries with money from the clerk's records management and preservation fund.
GA-0661 (2008)	Whether a county is authorized to pay a performance-based bonus to elected officials.
GA-0680 (2008)	Whether the Texas Department of Insurance may access criminal history record information that is subject to nondisclosure order under Government Code section 411.081(d).
GA-0714 (2009)	Authority of a county to contract with a private entity for the collection of delinquent fines, fees, and court costs.
GA-0773 (2010)	Whether a district clerk may accept assignment of a cash bail bond refund as payment of the defendant's fines and costs.
GA-0778 (2010)	Whether a commissioner's court may amend the county budget to reduce salaries for the county clerk's office because the clerk closed her office temporarily for a weather-related emergency.
GA-0834 (2011)	Whether a local governmental body subject to the Public Funds Investment Act, chapter 2256, Government Code, may invest in money market and other demand accounts.
GA-0835 (2011)	Constitutionality of Texas Transportation Code section 251.053, concerning a commissioner's court's declaration of a public road.
GA-0839 (2011)	Authority of a county judge to unilaterlly grant access to count financial records to a volunteer financial consultant.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
GA-0857 (2011)	Authority of a commissioner's court with regard to working hours, overtime and compensatory time, and timekeeping by county employees.
GA-0863 (2011)	Information that must be furnished to a respondent against whom a complaint is filed with the Texas Ethics Commission.
GA-0865 (2011)	Deadline for initiating a salary grievance proceeding by a county or precinct officer.
GA-0869 (2011)	Whether a county auditor is responsible for oversight of a constable's continuing education funds allocated under section 1701.157, Occupations Code.
GA-0872 (2011)	Authority of a commissioner's court and a county auditor with regard to county budget amendments.
GA-0875 (2011)	Use of the judicial fund created by section 21.006 of the Government Code.
GA-1017 (2013)	Whether Family Code section 58.0071 authorizes the custodian of physical records and files in a juvenile case to destroy hard copies in particular instances. (RQ-1119-GA) Family Code subsection 58.0071(b) authorizes the custodian of physical records and files in a juvenile case to destroy hard-copy, original paper records and files at any time if the custodian electronically duplicates and stores the information in the records and files. Family Code subsection 58.0071(c) authorizes a juvenile board, law enforcement agency, or prosecuting attorney to permanently destroy paper-based and electronic records and files of closed juvenile cases subject to the restrictions of subsections 58.0071(d) and (e).
GA-1021 (2013)	The appropriate court for a surety to file a release of surety for the surrender of a bond principal. (RQ-1121-GA) For purposes of Code of Criminal Procedure articles 17.16 and 17.19, after a person is released on a bond but before a formal charging instrument is filed in the county, county court-at-law or district court, prosecution is pending before the magistrate who properly received a complaint against the accused.
GA-1034 (2014)	Whether Government Code section 51.608, which requires that court costs imposed on a defendant in a criminal proceeding be the amount required on the date the defendant is convicted, violates federal and state constitutional prohibitions of ex post facto laws. (RQ-1135-GA) A Texas court would likely conclude that section 51.608 of the Texas Government Code does not violate the ex post facto clauses of the United States or Texas Constitutions.
H-826 (1976)	Whether court records pertaining to certain types of cases affecting the parent-child relationship are confidential.
JC-163 (1999)	Whether a county or district clerk may withhold fee from funds deposited as cash bail bond.
JC-195 (2000)	Whether a county sheriff is authorized to manage and dispose of cash bail bond money for unfiled criminal cases, and related questions.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
JC-259 (2000)	Whether a recent amendment to article 42.01, section 2 of the Code of Criminal Procedure precludes a court clerk from preparing a judgment.
JC-346 (2001)	Whether a statute that permits a court to order income withholding to collect certain attorney's fees and costs associated with establishing or enforcing a child support obligation violates art. XVI, section 28 of the Texas Constitution.
JM-216 (1984)	Whether a district clerk may docket a transferred case before the filing fee is paid.
JM-358 (1985)	Whether a separate docket sheet is required for the criminal docket kept by district clerks.
JM-373 (1985)	Authority of a county and/or district clerk to affix a judge's signature to a judgment on a criminal case.
JM-384 (1985)	Whether certain fees may be charged by a district clerk.
JM-397 (1985)	When a county treasurer is required to deposit funds under art. 1709a, V.T.C.S., and related questions.
JM-434 (1986)	Whether a county clerk is entitled to receive a fee in connection with administration of trust funds under art. 2558a, section 4c(a), V.T.C.S.
JM-727 (1987)	Duty of district clerk to file and docket improperly tendered documents.
JM-757 (1987)	Right of an individual to copy and reproduce public records in a district or county clerk's office.
JM-779 (1987)	Whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding.
JM-1162 (1990)	Regarding the status of trust funds held by a district clerk.
L.O. 92-087	Whether a district clerk may charge a fee for making certified copies of papers in a cause of action transferred to another court pursuant to rule 89 of the Texas Rules of Civil Procedure and related questions.
L.O. 93-089	Authority of a district clerk to impose certain fees in a proceeding for the forfeiture of contraband.
L.O. 93-094	Fees for issuing and "serving" a writ of income withholding for child support.
L.O. 94-042	Whether section 291.007 of the Local Government Code authorizes El Paso County to collect as a court cost a security fee for cases filed in the county probate court and related questions.
L.O. 94-085	Whether the district clerk may file an abstract of judgment for nonpayment of court costs.
L.O. 96-023	Investment of county funds governed by chapter 117, Local Government Code, and related questions.
L.O. 96-072	Fees for filing petition for preindictment writ of habeas corpus and a related question.
L.O. 96-131	Fee for filing verified petition for occupational driver's license following conviction for driving while intoxicated.
L.O. 97-009	Whether, in a civil case in which the litigants have agreed to fund an increase, jurors may receive a jury fee different from that the commissioner’s court has set and related questions.
L.O. 97-044	The legality of a district clerk collecting the initial operations fee on behalf of the domestic relations office.
L.O. 97-082	Computer signature on arrest warrants and affidavits.
L.O. 98-016	Instruments that the county clerk may accept for filing and recording.

Selected AG Opinion List

OPINION	ISSUE PRESENTED
MW-298 (1981)	Whether section 53.06 of the Family Code requires service of summons on the parents of a married juvenile.
OR 2000-1914	Whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code.
ORD 2001-2485	Whether certain information regarding minors receiving abortions without parental notification through the judicial approval process is subject to public disclosure.
ORD 2002-2558	Whether certain information regarding appointment of attorneys to represent minors under the Parental Notification Act is subject to public disclosure.
ORD 2002-3007	Whether certain information regarding payment to attorneys in cases under the Parental Notification Act is subject to public disclosure.
ORD No. 411 (1984)	Whether the names of individuals subpoenaed before a grand jury are available to the public under Open Records Act.
ORD No. 433 (1986)	Whether an indigent is entitled to an exemption from the cost provisions of the Open Records Act, article 6252-17a, V.T.C.S., whether the names of grand jurors are subject to required disclosure under the act, and related questions.
ORD No. 434 (1986)	Whether information in investigative files may be withheld under the Open Records Act.
ORD No. 513 (1988)	Whether records of an investigation into alleged criminal activity at the Dallas/Ft. Worth International Airport are subject to required disclosure under the Open Records Act, article 6252-17a, V.T.C.S.
Pending Requests	
RQ-1136-GA (2013)	Regarding the Confidentiality of Records in Fine-Only Misdemeanor Cases involving Children
RQ-1135 (2013)	Relating to Section 51.608, Texas Government Code, as added by S.B. 389, 83rd Leg., R.S. (2013)

FORMS

form II-1 –Request for Exemption due to Physical Impairment

form II-2 –Request for Exemption due to Mental Impairment

form II-3 –Request for Exemption due to English Language Inability

form II-4 –Order Granting Juror Exemption

form II-5 –List of Jurors Names Drawn from Jury Wheel

form II-6–Defendant's Jury List

form II-7 –State's/Plaintiff's Jury List

form II-8 –List of Jury Chosen

form II-9 –Juror Donation Form

form IX-1 –Order Directing the Form of the Appellate Record in Civil Cases

form IX-2 –Order Directing the Form of the Appellate Record in Criminal Cases

form X-1 –OAG Child Support Order Form

DISTRICT CLERK REPORTING REQUIREMENTS

December 2013

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
1	**Adoption** Decree	Certificate of Adoption	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-160 www.dshs.state.tx.us/vs/reqproc/forms/vs160.pdf (888) 963-7111	Not later than the 10th day of the first month after the month in which the adoption is rendered.	Family Code, § 108.003 Health & Safety Code § 192.009	Clerk to transmit a certified report of adoption using a VS-160 form.
2	Appeal of decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission–Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78744	(512) 804-4055	Not later than the 20th day after the date the suit is filed must send the notice Not later than the 20th day after the date the judgment is rendered must send certified copy of the judgment	Labor Code §§ 501.022, 501.050, 502.069, 503.069, 505.059	Clerk must mail a "notice" to the TWCC giving the case style, case number, and date the case was filed. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University or Texas Tech University Health Sciences Center; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense.
3	**Child Support** Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Vital Statistics 1100 W. 49th Street Austin, TX 78756-3191	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	No stated time frame	Family Code § 105.008	Clerk shall provide a record of a court order for child support. VS-165 form must be used. To the extent possible, the Title IV-D agency is to reimburse the clerk for costs incurred in providing the record.
4	Court Order – **releasing defendant sentenced to TDCJ on community supervision** before the 180th day after execution of sentence begins when offender is under bench warrant and not physically imprisoned in Institutional Division		Texas Department of Criminal Justice Correctional Institutions Division P.O. Box 99 Huntsville, TX 77342	(936) 437-2169 Fax: (936) 437-6325	Not later than the 7th day after the date of the defendant's release	Code of Criminal Procedure, art. 42.12, Section 6(a) Code of Criminal Procedure, art. 60.08(e)	The clerk is to "report" the release. No specific manner of reporting is mandated.
5	Court Order – **releasing person acquitted by reason of insanity** from mental hospital on regimen of outpatient care or on discharge from mental hospital		Crime victim or the victim's guardian or close relative		No stated time frame, but implication is immediately after the issuance of the order.	Code of Criminal Procedure, art. 46C.003 (HB 2124)	Clerk is to notify the victim or the victim's guardian or the victim's close relative of the release of the person's release from the mental hospital.
6	**Criminal Case** Disposition	Criminal History Reporting Form	Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	CR-43	Not later than the 30th day after the date on which the clerk receives the case disposition	Code of Criminal Procedure, art. 60.08	The clerk shall report the disposition of the case to the DPS. The DPS provides training on how to complete this form.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
7	Criminal Conviction - **automatic suspension of driver's license** required and license surrendered to court	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17 (512) 424-5720	Not later than the 10th day after the date on which the driver's license is surrendered to the court	Transportation Code § 521.347(a)	The court in which a person is convicted of an offense requiring automatic suspension of the person's driver's license "may" require the person to surrender his or her license to the court. If the license is surrendered to the court, then the clerk must send the license to the DPS along with completed Form DIC-17.
8	Criminal Conviction - negligent homicide or other felony in which **vehicle was used**	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17	Not later than the 7th day after the date of conviction	Transportation Code §§ 543.202, 543.203	Clerk is to submit to the DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form
9	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by certified **teacher**		Texas State Board for Educator Certification 1701 North Congress Ave WBT 5-100 Austin, TX 78701-1494		Not later than the fifth day after the date the teacher is convicted or is granted deferred adjudication	Code of Criminal Procedure, art. 42.018	Clerk is to provide the State Board for Educator Certification with written notice of the teacher's conviction or deferred adjudication.
10	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by licensed **nurse**		Texas Board of Nurse Examiners 333 Guadalupe 3-460 Austin, TX 78701	(512) 305-7400	Not later than the 30th day after conviction	Occupations Code § 301.409	Attorney representing the State "shall cause the clerk" to prepare and forward to the Board "a certified true and correct abstract of the court record of the case."
11	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **person licensed by Texas Department of Insurance**		Texas Department of Insurance Agent Licensing Division Mail Code 107-1A P.O. Box 149104 Austin, TX 78714-9104		Not later than the fifth day after the conviction or grant of deferred adjudication	Code of Criminal Procedure, art. 42.0181	Clerk is to provide the Department of Insurance with written notice of the person's conviction of, or deferred adjudication for, an offense under Penal Code Chapters 31 (theft), 32 (fraud), 34 (money laundering), or 35 (insurance fraud).
12	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **physician**		Texas Department of Public Safety Crime Records Service PO Box 4143 Austin, TX 78765-4143		Not later than the 30th day after the conviction or grant of deferred adjudication	Occupations Code § 160.101	Clerk is to prepare and forward the information required by Chapter 60, Code of Criminal Procedure. *See* Article 60.051.
13	Criminal Conviction (or grant of deferred adjudication) for felony by **"illegal criminal alien"**		Immigration and Naturalization Service (INS)		No stated time frame	Code of Criminal Procedure, art. 2.25	"Judge" is to report to INS. As a practical matter, however, the clerk should make this report. In some counties the sheriff's department or the CSCD make this report –if this is not ideal.
14	Criminal Conviction (or grant of deferred adjudication) for offense constituting family violence or offense under Title 5, Penal Code (criminal homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses in certain circumstances		Staff Judge Advocate at Joint Force Headquarters or the provost marshal of the military installation to which the defendant is assigned.		No stated time frame, but implication is immediately after issuance of the order.	Code of Criminal Procedure, art. 42.0183	This reporting requirement applies only if the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active duty status.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
15	Criminal Conviction (or grant of deferred adjudication) or juvenile adjudication for offense requiring **registration as a sex offender**		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Code of Criminal Procedure, art. 42.016	Clerk is to send to DPS a copy of the record of conviction, a copy of the order granting deferred adjudication, or a copy of the juvenile adjudication, and a copy of the court order requiring the DPS to include sex offender information in a driver's license record.
16	Criminal Conviction (or placement on community supervision) -felony committed by **law enforcement officer** licensed by the Texas Commission on Law Enforcement		Texas Commission on Law Enforcement 6330 U.S. Hwy. 290 E. Austin, TX 78723		No stated time frame, but basically upon the order being received by the clerk	Code of Criminal Procedure, art. 42.011	Clerk is to send (either electronically or by mail) the person's license number and a certified copy of the judgment. Article 42.022 refers to individuals licensed under Government Code, Chapter 415 (but now see Occupations Code, Chapter 1701). Note: Senate Bill 686 (83rd Leg) changed the name of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to the Texas Commission on Law Enforcement.
17	**Daily Deposit** of Funds		County Treasurer		Daily	Local Government Code 113.022	The Clerk must on or before the next regular business day after the date on which the funds are received deposit with the County Treasurer.
18	**Divorce** or Annulment granted	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	Not later than the 9th day of the month after the month the divorce or annulment was granted	Health & Safety Code § 194.002	Clerk must file a completed report for each divorce or annulment granted in the district court. For each report that is filed, the clerk may collect $1 as costs in the case in which the divorce or annulment was granted.
19	**DNA Test Results** – when court has ordered DNA testing of evidence containing biological material of person already convicted		Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	(512) 424-2105	Not later than the 30th day after the conclusion of a proceeding wherein a convicted defendant seeks DNA testing under Chapter 64 of the Code of Criminal Procedure.	Code of Criminal Procedure, art. 64.03	Clerk is to forward DNA test results to the DPS in cases where the testing is conducted by a laboratory other than a DPS laboratory or a laboratory operating under a contract with the DPS.
20	Exemplary Damage Award against a **nursing home** or nursing home officer, employee or agent		Director of Central Operations, Long Term Regulatory Texas Department of Aging and Disability Services (Mail Code E-341) P.O. Box 149030 Austin, TX 78714		No stated time frame. The presumption is that this notice should occur shortly after the award of exemplary damages.	Health & Safety Code § 242.051	Clerk is to notify the Texas Department of Human Services if exemplary damages are awarded against a nursing home (or an officer, employee or agent of a nursing home) pursuant to Civil Practice & Remedies Code, Chapter 41.
21	**Expunction** Order		Texas Department of Public Safety PO Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	When the order of expunction is final	Code of Criminal Procedure, art 55.02, Sec. 3(c)	Clerk must send certified copy of an expunction order to the Crime Records Service of DPS and to each official or agency or other governmental entity or political subdivision designated by the person who is the subject of the order. Must be sent by secure electronic mail, electronic transmission, fax or certified mail, return receipt requested.
22	**Federal Prohibited Person** Information		Texas Department of Public Safety		Not later than the 30th day after the relevant court order	Government Code §§ 411.052, 411.0521	Clerk must prepare and forward to DPS certain information in Government Code § 411.0521(b) when the court: (1) orders a person to receive inpatient mental health services; (2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility; (3) commits a person determined to have mental retardation; (4) Appoints a guardian for an incapacitated adult; (5) determines a person is incompetent to stand trial; or (6) finds a person is entitled to relief from a firearms disability.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
							Note: Not later than 09/01/10, clerk shall forward information for court orders issued between 09/01/89 and 08/31/09.
23	Fees ordered to be paid to **court-appointed individuals** in civil cases	Official District Court Appointments and Fees Report	Supreme Court of Texas Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 463-1625	Monthly. Not later than the 20th day of the month following the month reported	Supreme Court Order No. 94-9143 Government Code § 71.035(b)	Clerk is to report each fee of $500 or more approved or paid during the month. Fees of less than $500 may be reported, but are not required to be reported.
24	**Forfeiture of Bail** where defendant is charged with negligent homicide or other felony where vehicle was used	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O, Box 4087 Austin, TX 78773-0001	DR-18	Not later than the 7th day after forfeiture of bail	Transportation Code §§ 543.201, 543.202, 543.203	Clerk is to submit to DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form.
25	**Forfeiture of Corporation's Charter** – order forfeiting, appeal of order & disposition of appeal		Texas Secretary of State of Texas Administrative Unit P.O. Box 12887 Austin, TX 78711		"promptly" after the relevant court action	Tax Code § 171.304	If a district court forfeits a corporation's charter, the clerk is to mail a certified copy of the judgment to the Secretary of State. If an appeal is perfected, the clerk is to certify that fact to the Secretary of State. The clerk shall also certify any disposition of an appeal to the Secretary of State.
26	**Hate Crime** – request for affirmative finding	Report of a Request for a Hate Crime finding	Office of Court Administration P.O. 12066 Austin, TX 78711	www.courts.state.tx.us/oca/required.asp (512) 463-1625	Not later than the 30th day after the date judgment is entered in the case	Code of Criminal Procedure, art. 2.211	This report concerning requests for affirmative hate crime findings is part of the Official District Court Monthly Report that is sent to OCA. No other report is required.
27	**Interest** earned		Internal Revenue Service	1099-INT (866) 455-7438	File Copy A with IRS by March. Furnish Copy B to the Recipient by February. Keep Copy C for your file.	Local Government Code 117.003	If any funds deposited in the registry of the court are placed into an interest-bearing account, any person with a taxable interest in funds deposited to such account must submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be timely and appropriately reported to the IRS.
28	Judgment rendered in case appealing a decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission – Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78711-2757	(512) 804-4055	Not later than the 20th day after the date the judgment is rendered	Labor Code §§ 501.022; 501.050; 502.069; 503.069; 505.059	Clerk must mail a certified copy of the judgment to the TWCC. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University or Texas Tech University Health Sciences Center; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense
29	**Judicial Bypass Suit** – Order for State to pay ad litems, court costs, and court reporters		Accounting Division Attn: Staff Service Officer Texas Department of State Health Services P.O. Box 149347 Austin, TX 78714-9347	(512)458-7111 ext. 3945	Not later than the 90th day after the date of a final ruling	Family Code § 33.007 Texas Parental Notification Rule 1.9(b)(2), (4)	Clerk must "direct" copy of court order to Comptroller who shall pay the amount ordered from funds appropriated to the Texas Department of State Health Services. But copy of order is actually sent to the Texas Department of State Health Services instead of to the Comptroller.
30	Jury charge and sentence in **capital case**		Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 936-1358 www.courts.state.tx.us/oca/pdf/jury-instructions.pdf	Not later than the 30th day after the date the judgment of acquittal or conviction is entered	Government Code § 72.087	Clerk shall submit a written record of the case containing the contents of the trial court's charge to the jury and the sentence issued.
31	Jury Service - Disqualification because potential **juror not county resident**		County Voter Registrar		On the third business day of each month	Government Code § 62.114	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a resident of the county. On the third business day of each month, the clerk sends a copy of the list to the voter registrar.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
32	Jury Service - Disqualification because potential **juror not U.S. citizen**		County Voter Registrar, secretary of state, and county attorney or district attorney		On the third business day of each month	Government Code § 62.113 (HB 174)	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a citizen of the United States. On the third business day of each month, the clerk sends a copy of the list to the voter registrar, the secretary of state, and the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.
33	**Jury Service - Exemption** ordered by District Court		County Voter Registrar		"promptly"	Government Code § 62.109 (SB 85)	Clerk is to notify county voter registrar of the name and address of a person exempted from jury service because of a physical or mental impairment or because of an inability to comprehend or communicate in English.
34	**Jury Service – Permanent Exemption Claimed by Person Over 70**		County Voter Registrar		"promptly"	Government Code § 62.107 (SB 85)	Clerk shall have a copy of the statement claiming a permanent exemption on the basis of age promptly delivered to the county voter registrar.
35	**Juvenile** Court Case Disposition		Department of Public Safety Crime Records Service P.O. Box 4143 Austin, TX 78765-4143		Not later than 30 days after the date the clerk receives notice of the disposition	Family Code § 58.110(c)	Clerk is to report disposition of juvenile case to DPS. HB 1435 (83rd Leg) removed the criminal penalty for a clerk who fails to report the disposition of a case.
36	**Monthly Court Activity**	Official District Court Monthly Report	Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/oca/required.asp (512) 463-1625	No later than the 20th day of the month following the month reported	Government Code § 71.035	Reporting may be done either on paper or electronically.
37	**Name Change** for Minor		Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040			Family Code § 45.004(b)	If a child who is subject to the continuing jurisdiction of a court, the clerk is to transmit a copy of the minor's name change order.
38	**Occupational Driver's License** Granted or Revoked		Texas Department of Public Safety Safety Responsibility P.O. Box 15999 Austin, TX 78761-5999		No stated time frame, but implication is immediately after issuance of the order	Transportation Code § 521.249	Clerk is to send certified copy of the petition and court order granting the occupational license. The order is to set out the judge's findings and restrictions in regard to issuance of the license. Similarly, if the court that granted the license subsequently revokes the license, the clerk must send a certified copy of the order.
39	Order of **Nondisclosure**		Texas Department of Public Safety P.O. Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	Not later than the 15th business day after the date an order of nondisclosure is issued	Government Code § 411.081	Clerk is to send to DPS all relevant criminal history record information contained either in (1) the order; or (2) a copy of the order. Clerk is to send the material by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or fax. Note: Five bills from the 83rd Legislature made changes to Section 411.081 (HB 729-effective 6-14-13; SB 869-effective 6-14-13; SB 107-effective 9-1-13; SB 743-effective 9-1-13; and, SB 966-effective 9-1-14)
40	Order **Vacating a Protective Order**		Each individual who received a copy of the original protective order		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (c)	Notice must be given that the protective order has been vacated to each individual or entity who received a copy of the original or modified protective order from the clerk. Note: Two bills from the 83rd Legislature made changes to Section 85.042 (SB 355-effective 9-1-13 and HB 1435-effective 9-1-13)
41	**Paternity** Determination	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Immediately after order becomes final	Family Code § 108.008 Health & Safety Code § 192.0051	Clerk prepares report of each order determining paternity on designated form and sends to Vital Statistics.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
42	Petition Filed – **occupational driver's license** sought where driver's license has been suspended for certain criminal offenses		Attorney representing the State		No stated time frame, but best practice would be immediately after petition is filed	Transportation Code § 521.243	Clerk must send a copy of petition and any notice of hearing "by certified mail" to attorney representing the state if the petitioner's license was suspended following a conviction for an offense under Sections 19.05, 49.04, 49.07 or 49.08 of the Penal Code or an offense to which Section 521.342 of the Transportation Code applies.
43	Petition or Motion **Challenging the Constitutionality** of a Texas Statute		Attorney General of Texas Const_claims@texasattorneygeneral.gov OCA form referenced in Subsection (a-1) www.courts.state.tx.us/pdf/Constitutionality.pdf		No stated time frame, but implication is immediately after petition or motion is filed.	Government Code, § 402.010 Amended in 83rd Legislature by SB 392 and HB 1435 – effective 9-1-13	In an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a Texas statute, the party shall file the form required by Subsection (a-1) which is a form adopted by OCA. If the Attorney General is not a party to or counsel involved in the suit, the court shall serve notice of the constitutional challenge on the Attorney General by either certified or registered mail or electronically to an e-mail address designated by the Attorney General for the purpose of this section along with a copy of the petition, motion or other pleading that raises the challenge.
44	**Protective Order**		See Notes		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (a), (a-1) Note: Two bills from the 83rd Legislature amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)	Clerk shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b) (6), Government Code, to the chief of police of the municipality in which the person protected by the order resides, if the person reside in a municipality; to the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality; and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency. If the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active-duty status and the applicant or the applicant's attorney provides to the clerk the mailing address of the staff judge advocate or provost marshall, as applicable, then the clerk shall also send a copy of the order and required information to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned with the intent that the commanding officer will be notified.
45	Protective Order based on criminal defendant's commission of offense because of **bias or prejudice**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 (512) 424-7294 Helpline: (800) 224-5744		Code of Criminal Procedure, art. 6.08	Clerk is to send a copy of the order to the DPS "with a designation indicating that the order was issued to prevent offenses committed because of bias or prejudice."
46	**Protective Order** issued by court other than court where SAPCR and/or marriage dissolution suit is pending		Clerk of Court where SAPCR and/or marriage dissolution suit is pending		No stated time frame, but implication is immediately after the issuance of the order	Family Code § 85.062	Clerk is to send a copy of the protective order to the court in which the suit is pending.
47	Protective Order prohibiting respondent from going near a child-care facility or a **school**		Child-care facility and/or school		No stated time frame but implication is immediately after the issuance of the order	Family Code § 85.042	If the protective order prohibits the respondent from going near a child-care facility or a school, clerk is to send a copy of the protective order to the child-care facility or school. Note: Two bills from the 83rd Legislature amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)

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48	Protective Order suspending a license to carry a **concealed handgun**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 or (512) 424-7294 Helpline: (800) 224-5744	No stated time frame; but implication is immediately after the issuance of the order	Family Code § 85.042	Clerk is to send a copy of the order to the DPS. Note: Two bills from the 83rd Legislature amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)
49	**SAPCR** –Court Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	No stated time frame	Family Code § 108.001(a), (d)	This reporting requirement applies to any orders in SAPCR's that are not covered by a more specific reporting requirement. Clerk is to provide a certified record of any SAPCR order on a VS-165 form.
50	**SAPCR** –loss of court's jurisdiction	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 http://www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Upon the loss of continuing, exclusive jurisdiction	Family Code § 108.004	The report is to be made if the court has lost continuing, exclusive jurisdiction of the case for any reason. The reason for the loss of jurisdiction is to be noted on the form. Clerk must transmit a certified record on the VS-165, stating that jurisdiction has been lost, the reason for the loss, the name and all previous names of child, and date and place of birth of the child.
51	**Suspension of license** for failure to pay child support or vacation or stay of suspension		Appropriate State licensing agency – all licensing agencies are subject to this requirement unless otherwise exempted		No stated time frame, but implication is immediately after the issuance of the order. If order is one of vacation or stay then "promptly."	Family Code §§ 232.002; 232.008; 232.013	Clerk is to forward a copy of the final order suspending a license to the appropriate licensing authority (*e.g.*, Texas Board of Barber Examiners, Texas State Board of Pharmacy). The clerk is to collect a fee of $5 from the child support obligor for each order mailed. Note: HB 1846 from the 83rd Legislature amended Section 232.008 by placing a condition on the power of the court to stay an order.
52	Unclaimed **Cash Bail Bonds**		Texas Comptroller of Public Accounts Unclaimed Property Division P.O. Box 12019 Austin, Texas 78711-2019	Elaine Walker, (512) 463-2059	On or before November 1st following the Clerk's annual June 30th review. NOTE: Beginning 01/01/13, the report must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101 Melton v. State, 993 S.W.2d 95 (1999). (HB 257 – 82nd Legislature)	Clerk must review all cash bail bonds held by clerk each June 30. Any cash bail bonds that have been "dormant" for three years or more are considered to be abandoned property. The dormancy period begins to run three years from the date of entry of final judgment or order of dismissal in the action in which the funds were deposited. The clerk must report all cash bail bonds that are considered to be dormant to the Comptroller. NOTE: Beginning 01/01/13, the clerk must review all cash bail bonds held by clerk each March 1st.
53	**Unclaimed Funds** other than cash bail bonds		Texas State Comptroller Unclaimed Property Division Holder Reporting Section P.O. Box 12019 Austin, TX 78711-2019	Form 53-119 (800) 321-2274, ext. 6-6246 or in Austin, call (512) 936-6246	The report and the delivery must be made on or before November 1st following the Clerk's annual June 30th review. NOTE: Beginning 01/01/13, the report and the delivery must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101, 74.301 Local Government Code 117.002 (HB 257 – 82nd Legislature)	Any funds deposited in the registry of the court, except cash bail bonds, that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered to the comptroller without further action by any court. Property is presumed to be abandoned if, the property has remained unclaimed for 3 years and the owner has not communicated during the abandonment period and the location of the owner is unknown. The relevant time for determining if property has remained unclaimed for 3 years is June 30. NOTE: Beginning 01/01/13, the clerk must review property in the registry of the court on March 1to find property that is presumed to have been abandoned.

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54	**Vexatious Litigant** prohibited from filing new litigation (Pre-Filing Order)		Office of Court Administration P.O. Box 12066 Austin, TX 78711 Attention: Judicial Information	(512) 463-1625	Not later than 30 days after the date the prefiling order is signed. (HB 79, Article 9 – First Called Session)	Civil Practice & Remedies Code § 11.104	Clerk is to provide a copy of any pre-filing order issued under Section 11.101 of the Civil Practice & Remedies Code. These pre-filing orders prohibit individuals found to be vexatious litigants from filing, in propria persona, new litigation. Note: Chapter 11 of the Civil Practice & Remedies Code was significantly amended in SB 1630 from the 83rd Legislature. Clerks should carefully review the changes.