

SCAC Noticias

- Hatchell's son got married.
- Courtesy copy of the SOJ address (on table for members)
- Legislative update (see chart under this tab)
- Request from Judge Benton to eliminate jury shuffle (see letter under this tab)

Pending Legislation

Relating to Civil Practices or Supreme Court Rulemaking

Permissive Appeals:

There are several bills that would “fix” the problems the SCAC found in the permissive appeals statute. HB 1133 (Nixon); HB 1294 (Rose), companion SB494 (Williams). Some of these bills would also eliminate the provision that both parties must agree to the appeal. All still in committee.

Forum Non Conveniens:

HB 755 (Gattis), companion SB 294 (Duncan), relating to procedures relating to the doctrine of forum non conveniens in a civil cause of action. Bills would remove the “trump card” provision of the FNC statute so that Texas FNC law would more closely follow federal jurisprudence. HB 755 voted favorably from H: Civil Practices; SB 294 will be laid out in S: State Affairs on Monday.

Bills Requiring SCT Rulemaking:

HCR 88 (Crabb), companion SCR 7 (Duncan), urges the Supreme Court of Texas and the Court of Criminal Appeals of Texas, as necessary, to develop rules relating to the random assignment to courts of appeals of cases pending or on appeal from counties with overlapping appellate jurisdictions and relating to determining the court of appeals precedent applicable in such randomly assigned cases.

SB 503 (West) would require arbitration awards to be filed with TC as public records and subject to sealing under Texas Rule of Civil Procedure 76a. OCA, under supervision of the Chief, “shall implement procedures by which an arbitrator or arbitration services provider can be removed from the published list [of approved arbitrators?] in accordance with rules adopted by the supreme court for the efficient administration of justice.” to S: Business & Commerce.

- NOTE: Similar SB 504 (West) would just require arbitrators to file information with OCA to be published online. Referred to S: Business & Commerce.

HB 8 (Nixon), relating to civil claims involving exposure to asbestos and silica. “The supreme court may promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related or silica-related actions if such rules are consistent with Section 90.010.” Referred to H: Civil Practices

HB 1400 (Dutton), relating to discovery procedures for a claim against a governmental entity, would require the court to adopt rules under which a claimant may, if the defendant asserts a plea to the jurisdiction, obtain reasonable discovery to investigate whether circumstances exist that would confer jurisdiction on the court. Referred to H: Civil Practices

HB 17 (Corte) would require court to adopt rules governing the collection of statistics on the number of applications filed, granted, denied, and appealed under Ch. 33, Family Code. The information would be available to the public in aggregate on a regional basis. Referred to H: State Affairs.

HB 1212 (King) would require supreme court to adopt parental consent rules. Referred to H: State Affairs.

Others:

Private Process Servers: SB 165 (Wentworth) would regulate PPS through state licensing agency. Referred to S: Jurisprudence.

Evidence: HB149 (Pena), relating to the admissibility of evidence of an alleged victim's past sexual behavior or alleged sexual predisposition. Referred to H: Civil Practies.



The Supreme Court of Texas

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February 14, 2005

Mr. Charles L. Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Protective Order Forms

Dear Chip:

Justice Harriet O'Neill requests that a new matter be given high-priority status at the Supreme Court Advisory Committee's March meeting.

Concerned by studies indicating that victims of domestic abuse do not have ready access to the judicial system, the Supreme Court, in 2003, created a Protective Order Task Force to develop a protective-order kit for use by Texans who cannot afford a lawyer or who would not otherwise have access to the courts. *See Order Establishing Protective Order Task Force*, dated September 9, 2003, Misc. Docket No. 03-9146.

The Task Force, under the leadership of Stewart W. Gagnon of Houston, has completed its charge and has requested that the Court approve the standardized forms and instructions in the kit to ensure that courts statewide will accept and use them. The Court agrees that approved forms are needed and seeks advise from your committee on the proposed forms.

Therefore, I attach the Task Force's proposed forms and instructions for the committee's careful study. To aide in the this work, I also include the Task Force's Final Report, dated January 5, 2005, and minutes from the Task Force's six meetings.

The deadline on this project is extremely tight. The Court would like to launch the kit during National Crime Victims' Rights Week, April 10-16, with the help of First Lady Anita Perry and Attorney General Greg Abbott. The Court will meet to discuss finally approving the forms during an administrative conference on March 8, 2005.



I apologize for the quick turnaround, but the Court leans heavily on the keen insight and invaluable advice of your committee.

Respectfully Submitted,

Lisa Hobbs
Rules Attorney

cc: Justices of the Supreme Court of Texas

ALL ABOUT PROTECTIVE ORDERS

YOU CAN GET A PROTECTIVE ORDER:

- IF** There has been violence or threat of violence in your family, household, or in a dating relationship, and violence is likely to occur again.
- AGAINST** A person related to you by blood (like a parent or brother) or marriage (spouse or in-law), or A former spouse, or
The other parent of your child, or
Anyone you live with now, or used to live with, or
A current or past boyfriend or girlfriend.

There is no deadline for filing, but try to file soon after the violence or threat.

A PROTECTIVE ORDER CAN:

Protect Against Family Violence

- Order *Respondent* (the person who hurt you) not to assault or threaten you
- Require *Respondent* to stay away from you, your children or other family members, your home, where you work, your children's schools
- Limit how *Respondent* can communicate with you
- Take away *Respondent's* guns and licenses to carry guns

Respondent can be arrested on the spot for violating any of the above.

Determine Use of Property

- Decide who can use property that you and *Respondent* have been sharing, such as your house, apartment or car

Spousal Support

- Order *Respondent* to pay you support if you are married to each other

Child-Related Concerns

- Order child support and visitation for children you have with *Respondent*
- Order supervised visitation and safe places to exchange children

HOW DO YOU GET A PROTECTIVE ORDER?

File an Application

- In the county where you or *Respondent* live or
- In the county where your divorce or custody suit is on file

You do not have to pay to file an application for protective order – it is FREE.

Get the Judge to Sign the Temporary Ex Parte Order

- The temporary order provides some protection until the Protective Order hearing
- The Court may order *Respondent* to leave the home immediately

Set a Date for the Hearing

- Ask the clerk for help getting a hearing date
- The hearing date should be within two weeks from when you filed your application

Have Respondent Served with Paperwork

- Ask the clerk's office for help
- Usually a sheriff or constable will give *Respondent* the papers
- *Respondent* must be served before a hearing can be held

You do not have to pay for this service – it is FREE.

Prepare for the Hearing

- Get evidence about the violence -- photographs, medical records, torn clothing
- Get evidence about your and *Respondent's* income and expenses – paycheck stubs, bank accounts, tax returns, bills
- If you need advice about child support or visitation call the Family Violence Legal Line (800-374-HOPE)

Show Up for the Hearing

- The judge cannot grant a protective order unless you are there to testify
- Bring people to testify if they know about *Respondent's* violence or threats, or if you just want them there to give you support-- neighbors, family members, co-workers, police

Have the Judge Sign the Protective Order

- Have an order ready when you show up for the hearing
- Make sure the judge signs the order before you leave the courtroom

WHAT HAPPENS AT THE HEARING?

- You and your witnesses may testify
- *Respondent* may testify, ask you or your witnesses questions, bring other witnesses and evidence
- You can ask *Respondent* and *Respondent's* witnesses questions
- The Judge makes decisions at the end of the hearing about the Protective Order

AFTER THE JUDGE SIGNS THE PROTECTIVE ORDER

- Take the Protective Order to the clerk's office and ask for help
- Get copies of the Protective Order and keep one with you at all times
- Show the Order to police if you need their help
- Give copies of the Order to any day care, babysitter, or school
- Call the police if *Respondent* violates the Protective Order
- Consider safety planning with a counselor at family crisis center or by calling the National Domestic Violence Hotline (800-799-SAFE)

**If you need help
call the Family Violence Legal Line at 800-374-HOPE**
A service of the Women's Advocacy Project
or log on to www.texaslawhelp.org

HOW TO COMPLETE THE APPLICATION FOR PROTECTIVE ORDER

The clerk at the courthouse will put a number in the blank at the top of the form when you file the Application. This will be the case number for all papers filed in your case. The clerk will also put the name or number in the blank for the court.

Print your name in the blank for Applicant, the name of the person you want protection from in the blank for Respondent, and the name of the county where you are filing these papers.

PARTIES

Applicant is you. Print your full name and the county where you live.

Respondent is the other person, the person you want protection from. Print that person's full name and county.

Respondent's address for service is where Respondent lives, works, or regularly spends time.

Check all the boxes that apply to you and Respondent.

- *Applicant and Respondent are or have been members of the same family or household.* Check this box if you and Respondent live together, used to live together, or are related by blood or marriage.
- *Applicant and Respondent are parents of the same child(ren).* Check this box if you and Respondent have children together.
- *Applicant and Respondent are former spouses.* Check this box if you and Respondent are divorced from each other. If you check this box, you must either attach a copy of your divorce decree to the application or take it to the hearing. Check the box that says how you are giving the court your decree.
- *Applicant and Respondent are or have been in a dating relationship.* Check this box if you date or dated Respondent, but are not married to each other.
- *Applicant is an adult seeking to protect the Children named below from family violence, child abuse, or dating violence.* Check this box if there are children to be protected. Then list the children in the next section.

CHILDREN. *Applicant seeks protection for the following Children:*

List all the children you want to protect from Respondent and the county where they live. If you have more than four children that need protection, list them on a separate sheet of paper and staple it to this Application.

If you have a court order for any of the children, you must either attach a copy of the order to the application or take it to the hearing. Check the box that says how you are giving the court your order.

OTHER ADULTS. *Applicant seeks protection for the following Other Adults, who are or have been members of Applicant's family or household:*

List any other adults who need protection from Respondent, like your parents, brothers, sisters, friends, or roommates, and the county where they live.

FOUNDATIONS FOR PROTECTIVE ORDER

Check the first box if Respondent has hurt or threatened to hurt you or your children.

Check the second box if you had a protective order and Respondent violated it. If you check this box, you must either attach a copy of the protective order to the application or take it to the hearing. Check the box that says how you are giving the court the order.

REQUEST FOR PROTECTIVE ORDER – Preventing Family Violence

Check the boxes for what you want the court to order Respondent to do or not to do.

If you check the 4th box in this section, you will need to print the name of a person you trust who can talk to Respondent for you.

The box about Respondent having guns is already checked because it is required by law.

If you want the court to order anything else to protect you, print it on the blank lines at the end of this section.

6 REQUEST FOR PROTECTIVE ORDER – Use of Property

Fill out this section only if there is property you want the court to give you or protect for you.

The court can give you temporary use of a home for up to the two years that a protective order is in effect, but only if one of the following is true:

- Where you live is owned or rented by both you and Respondent; OR
- Where you live is owned or rented only by you; OR
- Respondent is obligated to support you or your children because you and Respondent are married, or Respondent is a parent of your children.

If you want temporary use of the home, check the box that applies to your case, and check the box that says "Awarding Applicant the exclusive possession of the Residence."

If Respondent is still living there, check the box that asks for help from law enforcement in getting Respondent out of the home.

You can ask for temporary use of other property, such as a car or furniture, if you and Respondent are married or bought the property together. Check the next box and list the property on the blank lines.

Check the next box to protect property from harm by Respondent.

7 REQUEST FOR PROTECTIVE ORDER – Spousal Support

If you and Respondent are married, you can ask for financial support from Respondent.

8 REQUEST FOR PROTECTIVE ORDER –Child-Related Concerns

Fill out this section only if you and Respondent are parents of the same children.

The court can order child support and visitation for up to the two years that a protective order is in effect.

Check the boxes for what you want the court to order.

9 REQUEST FOR TEMPORARY EX PARTE PROTECTIVE ORDER

This box is checked so that you can get a protective order right away that lasts for up to 14 days, or until the hearing.

10 REQUEST FOR EX PARTE ORDER TO IMMEDIATELY VACATE RESIDENCE

Fill out this section only if you want Respondent immediately kicked out of a home you share. You can ask the court to order Respondent to be kicked out if:

Respondent has hurt or threatened to hurt you or your children in the past thirty days; AND

You are living in the home OR have lived in the home in the past thirty days.

11 REQUEST TO KEEP INFORMATION CONFIDENTIAL

Check this box if you want the court to keep your whereabouts and contact information a secret from Respondent.

12 FEES AND COSTS

This box is checked because the law says Respondent must pay costs.

Sign your name on the line above "APPLICANT, PRO SE."

If you need help
 call the Family Violence Legal Line at 800-374-HOPE
A service of the Women's Advocacy Project
 or log on to www.texaslawhelp.org

HOW TO COMPLETE THE AFFIDAVIT FOR TEMPORARY EX PARTE PROTECTIVE ORDER

Wait to fill in the name of the county until you sign the Affidavit in front of a Notary Public.

Print your full name.

In the first box on the Affidavit, describe the most recent time family violence (including threats of violence) happened. If Respondent violated a prior protective order, describe what happened when the order was violated.

Print the date of the incident you are describing.

Then describe what happened. If you need additional room, use blank white paper. Print your full name on the top of all additional pages you use and staple all of them to the Application.

Was a weapon involved? Check yes if Respondent had a weapon during this incident of violence. Say what the weapon was, for example, a gun, kitchen knife, or bat.

Were any children present? Check yes if any children were present when this incident of violence happened. List the names of the children who were there.

Did you call the police? Check yes if you called the police to report this violence, even if it was a while after the incident.

Did you seek medical treatment? Check yes if you saw a doctor, nurse, paramedic, hospital, etc. because you were hurt in some way by this violence. Describe when, who you saw, and what treatment you received.

Has this person ever threatened or hurt you before? If Respondent has ever hurt or threatened you at any other time, describe it in the second box on the Affidavit. Follow the above directions you just used to describe the first incident.

Signature Section

DO NOT SIGN THE AFFIDAVIT YET. You must wait and sign the Affidavit in front of a Notary Public before filing this Application with the clerk. You should be able to find a Notary at a bank.

At the bottom of the Affidavit is a blank for a date: On _____, 20____. Leave this blank for the Notary Public to complete.

Attach the Affidavit to the Application for Protective Order.

If you need help
call the Family Violence Legal Line at 800-374-HOPE
A service of the Women's Advocacy Project
or log on to www.texaslawhelp.org

NO. _____

_____, Applicant § IN THE _____ COURT
v. § OF
_____, Respondent § _____ COUNTY, TEXAS

APPLICATION FOR PROTECTIVE ORDER



PARTIES

Applicant's Name: _____ County of Residence: _____
Respondent's Name: _____ County of Residence: _____
Respondent's address for service is: _____

Check all that apply:

- Applicant and Respondent are or have been members of the same family or household.
- Applicant and Respondent are parents of the same child(ren).
- Applicant and Respondent are former spouses. A copy of their divorce decree is:
check one: attached.
 currently unavailable but will be filed with the court.
- Applicant and Respondent are or have been in a dating relationship.
- Applicant is an adult seeking to protect the Children named below from family violence, child abuse, or dating violence.



CHILDREN. Applicant seeks protection for the following Children:

Name: _____ County of Residence: _____
Name: _____ County of Residence: _____
Name: _____ County of Residence: _____
Name: _____ County of Residence: _____

Check all that apply:

- Additional children are listed on a sheet attached to this Application.
- The Children are or have been members of Applicant's family or household.
- The Children are the subject of a court order affecting their conservatorship, support, possession, or access, a copy of which is: check one: attached; or
 currently unavailable but will be filed with the court.



OTHER ADULTS. Applicant seeks protection for the following Other Adults, who are or have been members of Applicant's family or household:

Name: _____ County of Residence: _____
Name: _____ County of Residence: _____



FOUNDATIONS FOR PROTECTIVE ORDER

Check one or both:

- Respondent has committed family violence and is likely to commit family violence in the future.
- Respondent has violated a prior protective order that has expired, or will expire in 30 days or less, a copy of which is:
check one: attached; or
 currently unavailable but will be filed with the court.



REQUEST FOR PROTECTIVE ORDER – Preventing Family Violence

Applicant requests a Protective Order prohibiting Respondent from:

Check all that apply:

- Committing family violence against the Applicant, Children, or Other Adults named above.
- Communicating in a threatening or harassing manner with the Applicant, Children, or Other Adults named above.
- Communicating a threat through any person to the Applicant, Children, or Other Adults named above.

- Communicating or attempting to communicate in any manner with:
Check all that apply: Applicant Children Other Adults named above
 except through _____ or another person appointed by the Court for necessary
 communications from Respondent. Good cause exists for prohibiting Respondent's direct communications.
- Going within 200 yards of the:
Check all that apply: Applicant Children Other Adults named above.
- Going within 200 yards of residence, workplace or school of the:
Check all that apply: Applicant Other Adults named above.
- Going within 200 yards of the Children's residence, child-care facility, or school, except as specifically authorized in a
 possession schedule entered by the Court.
- Stalking, i.e. engaging in conduct directed specifically toward the Applicant, Children, or Other Adults named above
 that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them, including following these
 persons.
- Possessing a firearm or ammunition, unless Respondent is a peace officer actively engaged in employment as a sworn,
 full-time paid employee of a state agency or political subdivision.

Applicant further requests that the Court enter a Protective Order:

Check all that apply:

- Suspending any license to carry a concealed handgun issued to Respondent under state law.
- Requiring Respondent to complete a battering intervention and prevention program; or if no battering intervention
 and prevention program is available, to counsel with a social worker, family service agency, physician, psychologist,
 licensed therapist, or licensed professional counselor; and to pay all costs for the counseling or treatment program
 ordered.
- Requiring Respondent to comply with the following additional provisions that are necessary or appropriate to
 prevent or reduce the likelihood of family violence:



6 REQUEST FOR PROTECTIVE ORDER – Use of Property

The Residence located at _____ is:

- Check one:*
- jointly owned or leased by Applicant and Respondent;
 - solely owned or leased by Applicant; or
 - solely owned or leased by Respondent; and Respondent is obligated to support the Applicant or the
 children in Applicant's possession.

Applicant requests a Protective Order:

Check all that apply:

- Awarding Applicant the exclusive possession of the Residence identified above, and if necessary, ordering
 Respondent to vacate the Residence.
- Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany Applicant to
 the Residence; to inform Respondent that the Court has ordered Respondent excluded from the Residence; to
 provide protection while Applicant takes possession of the Residence and Respondent removes any necessary
 personal effects; and, if Respondent refuses to vacate the Residence, to remove Respondent from the Residence and
 arrest Respondent for violating the Court's order.
- Awarding Applicant the exclusive use and possession of the following jointly owned property: _____
- Prohibiting Respondent from damaging, transferring, encumbering, or otherwise disposing of any property jointly
 owned or leased by the parties, except in the ordinary course of business, including but not limited to removing or
 disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).



7 REQUEST FOR PROTECTIVE ORDER – Spousal Support

Respondent is Applicant's spouse, or is otherwise legally obligated to support Applicant.
Applicant requests that Respondent be ordered to pay support to Applicant in an amount set by the Court.



8 REQUEST FOR PROTECTIVE ORDER –Child-Related Concerns

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

In the best interests of Applicant, Children, or Other Adults named above, Applicant requests a Protective Order:

Check all that apply:

- Prohibiting Respondent from removing the Children from Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule entered by the Court.
- Prohibiting Respondent from removing the Children from the jurisdiction of the Court.
- Establishing a schedule for Respondent's possession of the Children, subject to any terms and conditions necessary for the safety of the Applicant or the Children.
- Requiring Respondent to pay child support in an amount set by the Court.



9 REQUEST FOR TEMPORARY EX PARTE PROTECTIVE ORDER

Based on the information provided in the attached Affidavit, there is a clear and present danger of family violence that will cause the Applicant, Children or Other Adults named above immediate and irreparable injury, loss and damage, for which there is no adequate remedy at law.

Applicant requests that the Court dispense with the necessity of a bond, and without notice or hearing, immediately issue a Temporary Ex Parte Protective Order.



10 REQUEST FOR EX PARTE ORDER TO IMMEDIATELY VACATE RESIDENCE

Applicant currently resides at _____ (the Residence), or has resided there within the 30 days prior to filing this Application. Respondent committed family violence against a member of the household within the 30 days prior to the filing of this Application, as more specifically described in the attached Affidavit. There is a clear and present danger that Respondent is likely to commit family violence against a member of the household.

Applicant requests that the Court dispense with the necessity of a bond, and without notice or hearing, immediately issue a Temporary Ex Parte Protective Order:

Granting Applicant exclusive use and possession of the Residence and ordering Respondent to vacate the Residence immediately, and remain at least 200 yards away from the Residence pending further order of the Court; and

Directing the sheriff, constable, or chief of police to provide a law enforcement officer to accompany Applicant to the Residence, to inform Respondent that the Court has ordered Respondent to vacate the Residence, and to provide protection while Applicant takes possession of the Residence or necessary personal property from the residence.



11 REQUEST TO KEEP INFORMATION CONFIDENTIAL

Applicant requests that addresses and telephone numbers for residences, workplaces, schools, or childcare facilities be kept confidential.



12 FEES AND COSTS

Applicant requests that Respondent be ordered to pay fees for service of process, all other fees and costs of Court, and reasonable attorneys' fees, if applicable.

Respectfully Submitted,

APPLICANT, PRO SE

AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF _____

My name is _____. I am over 18 and otherwise competent to make this Affidavit. The information and events described in this Affidavit are true and correct.

Date: _____

Was a weapon involved? yes no If yes, what kind? _____
Were any children present? yes no If yes, who? _____
Did you call the police? yes no If yes, what happened? _____
Did you seek medical treatment? yes no
If yes, describe below.

Has this person ever threatened or hurt you before? *Describe below, including date(s).*

Were weapons ever involved? yes no If yes, what kind? _____
Were any children ever present? yes no If yes, who? _____
Have the police ever been called? yes no
Has medical treatment ever been needed? yes no If yes, what happened? _____
If yes, describe below:

Signature of Applicant

On _____, 20____, Applicant _____ personally appeared before me, the undersigned notary. After being sworn, Applicant stated that she/he is over 18 and otherwise qualified to make this oath, that she/he has read the foregoing Application and Affidavit, that she/he has personal knowledge of the facts asserted, and the facts asserted are true to the best of her knowledge and belief.

Subscribed and sworn to before me on _____, 20____.

Notary Public in and for the State of Texas

My Commission Expires: _____

HOW TO COMPLETE THE TEMPORARY EX PARTE PROTECTIVE ORDER

When you file the Application, the clerk will print the case number and court at the top. This will be the case number and court for all papers filed in your case. After you file the Application, print the case number and the court at the top of the Temporary Ex Parte Protective Order.

Print your name in the blank for Applicant, the name of the person you want protection from in the blank for Respondent, and the name of the county where you are filing these papers.



HEARING DATE

The judge will fill this in.



FINDINGS

You do not need to print anything here. It explains why the Court can sign the Temporary Ex Parte Protective Order without a hearing.



RESPONDENT.

Print Respondent's full name and the county where Respondent lives.



PROTECTED PERSONS.

Applicant. Print your full name and the county where you live.

Children. Print the names of all the children you want to protect from Respondent and the county where the children live.

Other Adults. List the other adults who you named on the first page of the Application, like your parents, brothers, sisters, friends, or roommates, and the county where they live.



TEMPORARY EX PARTE ORDERS—Preventing Family Violence

DO NOT check the boxes in this section. The judge will decide which boxes to check and which blanks to fill in. Be prepared to give the judge information to fill in the blanks.



EX PARTE ORDER TO IMMEDIATELY VACATE RESIDENCE

The judge will fill in this section if you checked Box 10 on the Application.



HEARING SET

Ask the clerk for help getting a hearing date. Print the date and the address of the court in the blanks.

IMPORTANT

**You cannot give Respondent permission to violate anything that
has been ordered in this Temporary Ex Parte Protective Order.**

If you need help
call the Family Violence Legal Line at 800-374-HOPE
A service of the Women's Advocacy Project
or log on to www.texaslwhelp.org

NO. _____

_____, Applicant § IN THE _____ COURT
v. §
_____, Respondent § OF
_____ COUNTY, TEXAS §

TEMPORARY EX PARTE PROTECTIVE ORDER



HEARING DATE: _____, 20__



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



RESPONDENT. This Temporary Ex Parte Protective Order applies to the following Respondent:

Name: _____ County of Residence: _____



PROTECTED PERSONS. The following persons are protected by the terms of this Protective Order:

Applicant: Name: _____ County of Residence: _____

Children: Name: _____ County of Residence: _____

Name: _____ County of Residence: _____

Name: _____ County of Residence: _____

Name: _____ County of Residence: _____

Other Adults: Name: _____ County of Residence: _____

Name: _____ County of Residence: _____



TEMPORARY EX PARTE ORDERS—Preventing Family Violence

IT IS ORDERED that Respondent is immediately prohibited from:

Check all that apply

- Committing family violence against the Applicant, Children, or Other Adults named above.
- Communicating in a threatening or harassing manner with the Applicant, Children, or Other Adults named above.
- Communicating a threat through any person to the Applicant, Children, or Other Adults named above.
- Communicating or attempting to communicate in any manner with:
Check all that apply: Applicant Children Other Adults named above
except through _____ or another person appointed by the Court for necessary communications from the Respondent. Good cause exists for prohibiting Respondent's direct communications.
- Going within 200 yards of the:
Check all that apply: Applicant Children Other Adults named above
except to attend court proceedings.

- Going within 200 yards of the residence, workplace or school of the:
Check all that apply: Applicant Other Adults named above

The addresses of the prohibited locations are: *Check all that apply:*

- Deemed confidential by the Court, and the clerk is ORDERED to strike the information from all public records of the Court and maintain a confidential record of the information for use only by the Court.
- Disclosed as follows:
Applicant's Residence: _____
Applicant's Workplace/School: _____
Other: _____
Other: _____

- Going within 200 yards of the Children's residence, child-care facility, or school.

The addresses of the prohibited locations are: *Check all that apply:*

- Deemed confidential by the Court, and the clerk is ORDERED 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.
- Disclosed as follows:
Children's Residence: _____
Children's Daycare/School: _____
Other: _____

- Stalking, i.e. engaging in conduct directed specifically toward the Applicant, Children, or Other Adults named above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them, including following any of those persons.

- Possessing a firearm or ammunition, unless Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

- Removing the Children from Applicant's possession or from their child-care facility or school.

- Removing the Children from the jurisdiction of the Court.

- Interfering with Applicant's use of the residence located at _____, including but not limited to disconnecting utilities or telephone service or causing such services to be disconnected.

- Interfering with Applicant's use and possession of the following property:

- Damaging, transferring, encumbering, or otherwise disposing of any property jointly owned or leased by Applicant and Respondent, except in the ordinary course of business, including but not limited to removing or disabling any vehicle owned or possessed by the Applicant or jointly by the parties (whether so titled or not).



EX PARTE ORDER TO IMMEDIATELY VACATE RESIDENCE

The Court finds that the Residence located at _____ is:

- Check one:* jointly owned or leased by Applicant and Respondent;
 solely owned or leased by Applicant; or
 solely owned or leased by Respondent; and Respondent is obligated to support the Applicant or the children in Applicant's possession.

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

Respondent is therefore ORDERED to vacate the Residence on or before _____ o'clock a.m./p.m. on _____, 20____, and to remain at least 200 yards away from the Residence until further order of the Court.

Applicant shall have exclusive use and possession of the Residence until further order of the Court.

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



HEARING SET

IT IS FURTHER ORDERED that notice issue to Respondent to appear, and Respondent is ORDERED to appear in person before this Court located at:

on _____, 20__, at _____ o'clock a.m./p.m. The purpose of this hearing is to determine whether the Court should issue the Protective Orders and other relief requested in the Application for Protective Order filed in this case.



DURATION OF ORDER

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



WARNINGS

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 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.

SIGNED on _____, 20__, at _____ o'clock a.m./p.m.

JUDGE PRESIDING

HOW TO COMPLETE THE PROTECTIVE ORDER

When you file the Application, the clerk will print the case number and court at the top. This will be the case number and court for all papers filed in your case. After you file the Application, print the case number and the court at the top of the Protective Order.

Print your name in the blank for Applicant, the name of the person you want protection from in the blank for Respondent, and the name of the county where you are filing these papers.



HEARING DATE

Print the date of your hearing.



APPEARANCES

Applicant: Print your full name.

Respondent: Print Respondent's full name.

The judge will decide which boxes to check in this section.



PROTECTED PERSONS.

Applicant. Print your full name and the county where you live.

Children. Print the names of all the children you want to protect from Respondent and the county where the children live.

Other Adults. List the other adults who you named on the first page of the Application, like your parents, brothers, sisters, friends, or roommates, and the county where they live.



RECORD.

The judge will decide which box to check.



FINDINGS

The judge will decide which boxes to check.



PROTECTIVE ORDER – Preventing Family Violence

Do not check the boxes in this section. The judge will decide which boxes to check and which blanks to fill in. Be prepared to give the judge information to fill in the blanks.



PROTECTIVE ORDER—Use of Property (Residence)

The judge will decide if this section should be filled in. If you checked Box 6 on the Application, be prepared to give the judge information to fill in the blanks.



PROTECTIVE ORDER—Use of Property (Additional Property)

The judge will decide if this section should be filled in. If you checked Box 6 on the Application, be prepared to give the judge information to fill in the blanks.



PROTECTIVE ORDER—Spousal Support

The judge will decide if this section should be filled in. If you checked Box 7 on the Application, be prepared to give the judge information to fill in the blanks.



PROTECTIVE ORDER—Child-Related Concerns

The judge will decide if this section should be filled in. If you checked Box 8 on the Application, be prepared to give the judge information to fill in the blanks.



FEES AND COSTS

The judge will decide if this section should be filled in.



ATTORNEY'S FEES

The judge will decide if this section should be filled in.



SERVICE

The judge will decide which boxes to check.



COPIES FORWARDED

The judge will decide which boxes to check.



DURATION OF ORDER

The judge will fill this in.

IMPORTANT

Fill in the Respondent Information Sheet and give to the clerk.

**If you need help
call the Family Violence Legal Line at 800-374-HOPE
A service of the Women's Advocacy Project
or log on to www.texaslawhelp.org**

NO. _____

_____, Applicant § IN THE _____ COURT
v. §
_____, Respondent § OF
_____ COUNTY, TEXAS §

PROTECTIVE ORDER



HEARING DATE: _____, 20__



APPEARANCES

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Applicant: _____
<i>Check one</i>
<input type="checkbox"/> Appeared in person and announced ready.
<input type="checkbox"/> Appeared in person and by attorney, _____ and announced ready.
<input type="checkbox"/> Appeared by signature below evidencing agreement to the entry of this Protective Order. | <input checked="" type="checkbox"/> Respondent: _____
<i>Check one:</i>
<input type="checkbox"/> Although duly cited, did not appear and wholly made default.
<input type="checkbox"/> Appeared in person and announced ready.
<input type="checkbox"/> Appeared in person and by attorney, _____, and announced ready.
<input type="checkbox"/> Appeared by signature below evidencing agreement to the entry of this Protective Order. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



PROTECTED PERSONS. The following persons are protected by the terms of this Protective Order:

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



RECORD. A record of testimony: was made; or was waived by the parties.



FINDINGS

- All legal requirements have been met, and the Court has jurisdiction over the parties and subject matter of this case.
- Applicant and Respondent are spouses, former spouses, parents of the same child, live-in partners, or former live-in partners, and are thus "intimate partners" as defined by 18 U.S.C. § 921(a)(32).
- This Order is in the best interests of the Protected Person(s) and is necessary to prevent future family violence.
- Statutory grounds for the Protective Order have been established:
Check one or both: Respondent has committed family violence against the Applicant or Children named above, and is likely to commit family violence in the future.
 Respondent has violated a prior protective order that has expired or will expire within 30 days.
- The parties have agreed to the terms of this Protective Order.



PROTECTIVE ORDER -- Preventing Family Violence

The Court finds that Respondent has committed family violence.
IT IS THEREFORE ORDERED that Respondent is prohibited from:

- Committing family violence against the Applicant, Children, or Other Adults named above.
- Communicating in a threatening or harassing manner with the Applicant, Children, or Other Adults named above.
- Communicating a threat through any person to the Applicant, Children, or Other Adults named above.
- On the basis of good cause shown, from communicating or attempting to communicate in any manner with:
Check all that apply: Applicant Children Other Adults named above
 except through _____, who is hereby appointed by the Court to facilitate any necessary communications by Respondent.
- Going within 200 yards of the:
Check all that apply: Applicant Children Other Adults named above
 except to attend court proceedings or as specifically authorized in a possession schedule entered by the Court.
- Going within 200 yards of the residence, workplace and/or school of the:
Check all that apply: Applicant Other Adults named above.
 The addresses of the prohibited locations are:
Check all that apply:
 - Deemed confidential by the Court, and the clerk is ORDERED to strike the information from all public records of the Court and maintain a confidential record of the information for use only by the Court.
 - Disclosed as follows:
 Applicant's Residence: _____
 Applicant's Workplace/School: _____
 Other: _____
 Other: _____
- Going within 200 yards of the Children's residence, child-care facility, and/or school, except as specifically authorized in a possession schedule entered by the Court.
 The addresses of the prohibited locations are:
Check all that apply:
 - Deemed confidential by the Court, and the clerk is ORDERED 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.
 - Disclosed as follows:
 Children's Residence: _____
 Children's Daycare/School: _____
 Other: _____
- Stalking, *i.e.* engaging in conduct directed specifically toward the Applicant, Children, or Other Adults named above that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass them, including following any of those persons.
- Possessing a firearm or ammunition, unless Respondent is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

IT IS FURTHER ORDERED that:

- Any license to carry a concealed handgun issued to Respondent is hereby suspended.
- Respondent is required to enroll in, pay costs for, and complete a family violence prevention program, as follows:
Check one:
 - The local Battering Intervention and Prevention Program that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice: _____
 _____;
 or if no such Battering Intervention and Prevention Program is available, then:
 - A counseling program recommended and conducted by the following social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor: _____
 _____.

Respondent is ordered to enter the program no later than _____, 20____, and to complete the program by _____, 20____. Respondent is ordered to comply

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

Required to comply with the following additional provisions for the prevention of family violence:



PROTECTIVE ORDER—Use of Property (Residence)

The Court finds that the Residence located at _____ is:

- Check one:* jointly owned or leased by Applicant and Respondent;
 solely owned or leased by Applicant; or
 solely owned or leased by Respondent; and Respondent is obligated to support the Applicant or the children in Applicant's possession.

IT IS ORDERED that Applicant shall have exclusive use of the Residence identified above, and Respondent shall vacate the Residence no later than _____ o'clock a.m./p.m. on _____, 20__.

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



PROTECTIVE ORDER—Use of Property (Additional Property)

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

Respondent is hereby prohibited from damaging, transferring, encumbering, or otherwise disposing of the Additional Property identified above or any other property jointly owned or leased by the parties, except in the ordinary course of business, including but not limited to removing or disabling any vehicle owned or possessed by Applicant or jointly by the parties (whether so titled or not).



PROTECTIVE ORDER—Spousal Support

IT IS ORDERED that Respondent pay support to Applicant in the amount of \$_____ per month, with the first payment being due and payable on _____, 20__, and a like payment being due and payable on the _____ day of each month thereafter until further order of this Court. IT IS ORDERED that all payments shall be sent to Applicant at the following address: _____

_____, and postmarked on or before the due date for each payment.



PROTECTIVE ORDER—Child-Related Concerns

The Court finds that Respondent is a parent of the Children.

The Protective Order below is in the best interests of the Applicant, Children, and/or Other Adults named above.

IT IS ORDERED that:

- No Removal of the Children.** Respondent is prohibited from:
Check one or both: Removing the Children from Applicant's possession or from their child-care facility or school, except as specifically authorized in a possession schedule ordered by the Court.

Removing the Children from the jurisdiction of the Court.

Possession of the Children by Respondent.

Check one:

- Applicant is granted exclusive possession of the Children, and Respondent shall have no possession or access to the Children, unless and until further orders are entered by the Court. This order supersedes any order previously entered granting Respondent possession or access to the Children.
- Applicant is granted primary possession of the Children, and Respondent may have possession of the Children pursuant to the possession schedule attached to this Protective Order as Exhibit A, subject to the terms and conditions stated therein as necessary for the safety of the Applicant and the Children. The possession schedule hereby ordered supersedes any order previously entered granting Respondent possession and access to the Children.
- The possession schedule previously entered on _____, 20____, in case number _____, styled _____, shall continue to govern Respondent's possession and access to the Children, except that no exchanges of the children shall occur at a prohibited location described in this Protective Order.

Child Support.

Check one:

- Respondent is ordered to pay child support to the Applicant in the amount of \$_____ per month, with the first such payment being due and payable on _____, 20____, and a like payment being due and payable on the _____ day of each month thereafter for the term of this Protective Order or until further order of the Court, whichever occurs first.

Respondent is ordered to make all payments for child support payable to the Applicant, and deliver all payments to Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and then remitted by that agency to Applicant for the support of the Children. Respondent is further ordered to keep the child support registry informed of Respondent's residence and work addresses.

On this date, the Court signed an Income Withholding Order, ordering the employer and any subsequent employer of Respondent to withhold-ordered child support from Respondents' earnings. THE EXISTENCE OF THE ORDER FOR WITHHOLDING FROM EARNINGS FOR CHILD SUPPORT DOES NOT EXCUSE RESPONDENT FROM PERSONALLY MAKING ANY CHILD SUPPORT PAYMENT HEREIN, EXCEPT TO THE EXTENT RESPONDENT'S EMPLOYER ACTUALLY MAKES THE PAYMENT ON BEHALF OF THE RESPONDENT.

- The child support order previously entered on _____, 20____, in case number _____, styled *In the Interest of* _____, shall continue to govern Respondent's child support obligations with respect to the Children. Nothing in this Protective Order shall be construed as relieving Respondent of any past or future obligation to pay child support as previously ordered.



FEES AND COSTS

Respondent is ordered to pay the total amount of \$_____ in fees and costs, as more specifically detailed below:

- Fees for cost of service in the amount of \$_____; and
- All other fees and costs of Court in the amount of \$_____.

Respondent is ordered to pay the entire amount ordered by cash, cashier's check, or money order, on or before the sixtieth day after the date this order is entered, to the clerk of the Court at the following address: _____



ATTORNEY'S FEES

The Court awards \$_____ as attorney's fees for the services of _____, an attorney licensed in Texas who has assisted in the entry of this Protective Order. Respondent is ORDERED to pay this amount to the attorney by cash, cashier's check, or money order, on or before the sixtieth (60th) day after the date this order is entered, at the following address: _____



SERVICE. This Protective Order:

Check all that apply:

- Was served on Respondent in open court.
- Shall be personally served on Respondent.
- Shall be delivered to Respondent by certified mail, return receipt requested, or by fax, to Respondent's last known address or fax number, or in any other manner allowed by Tex. R. Civ. P. 21a.
- Shall be mailed by the clerk of the Court to Respondent's last known address.



COPIES FORWARDED. The Clerk is ORDERED to forward copies of this Protective Order and accompanying Respondent Information Form to: *check all that apply:*

- Sheriff and Constable of _____ County, Texas
- Chief of Police of the City of _____
- Children's child-care facility and/or schools identified above.

Any law enforcement agency receiving a copy of this Protective Order is ORDERED to enter all required information into the statewide law enforcement information system maintained by the Department of Public Safety within ten days of receipt of the Protective Order.



DURATION OF ORDER

This Protective Order is in full force and effect for two years from the date the order is signed, or until _____, 20___, whichever is sooner.

If Respondent is confined or imprisoned on the date on which this Protective Order is scheduled to expire, then the period for which the Protective Order is effective is extended, and the Protective Order expires on the date that is one year after the date that Respondent is released from confinement or imprisonment.



WARNING

A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

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

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.

POSSESSION OF A FIREARM OR AMMUNITION WHILE THIS PROTECTIVE ORDER IS IN EFFECT MAY SUBJECT RESPONDENT TO FEDERAL CRIMINAL PENALTIES.

IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO KNOWINGLY PURCHASE, RENT, LEASE, OR RECEIVE AS A LOAN OR GIFT FROM ANOTHER, A HANDGUN FOR THE DURATION OF THIS ORDER.

INTERSTATE VIOLATION OF THIS PROTECTIVE ORDER MAY SUBJECT RESPONDENT TO

FEDERAL CRIMINAL PENALTIES. THIS PROTECTIVE ORDER IS ENFORCEABLE IN ALL FIFTY STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, AND U.S. TERRITORIES.

SIGNED on _____, 20____, at _____ o'clock a.m./p.m.

JUDGE PRESIDING



AGREED ORDER

By their signatures below, Applicant and Respondent agree to the entry of the foregoing Protective Order and approve all terms stated in the Order:

APPLICANT

RESPONDENT



RECEIPT ACKNOWLEDGED

Respondent hereby acknowledges receipt of a copy of the foregoing Protective Order.

RESPONDENT

RESPONDENT INFORMATION

Please provide the following information regarding Respondent so that Respondent may be served with the court papers in your case. Items in ALL UPPERCASE LETTERS must be answered so that your protective order may be entered into the state database used by law enforcement for protective orders.

NAME OF RESPONDENT: _____

Alias (Nickname): _____

SEX M or F DOB ____/____/____ DL # _____

HEIGHT ____ ft ____ in Place of Birth _____ Other ID# _____

WEIGHT _____ lbs SS # _____ State ____ Expiration _____

RACE

- American Indian/Alaskan Native (I)
- Asian/Pacific Islander (A)
- Black (B)
- White (W)
- Unknown (all other non-whites) (U)

Other details: _____

Ethnicity

- Hispanic (H)
- Non-Hispanic (N)
- Unknown (U)

Other details: _____

EYE COLOR

- Black (BLK)
- Blue (BLU)
- Brown (BRO)
- Gray (GRY)
- Green (GRN)
- Hazel (HAZ)
- Maroon (MAR)
- Pink (PNK)
- Multicolored (MUL)
- Unknown (XXX)

Other details: _____

HAIR COLOR

- Black (BLK)
- Blond or Strawberry (BLN)
- Brown (BRO)
- Gray or partially gray (GRY)
- Red or Auburn (RED)
- White (WHI)
- Sandy (SDY)
- Unknown or completely Bald (XXX)

also indicate BALD on
Scars/Tattoos/Markings

Other details: _____

Style _____

Length _____

Skin

- Albino (ALB)
- Black (BLK)
- Dark (DRK)
- Dark Brown (DBR)
- Fair (FAR)
- Light (LGT)
- Light Brown (LBR)
- Medium (MED)
- Medium Brown (MBR)
- Olive (OLV)
- Ruddy (RUD)
- Sallow (SAL)
- Yellow (YEL)
- Unknown (XXX)

Other details: _____

Other Identifying Information *Check all that apply*

- | | | |
|----------------------------------------------|------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Glasses | <input type="checkbox"/> Tattoos _____ | <input type="checkbox"/> Mental Problems _____ |
| <input type="checkbox"/> Beard | <input type="checkbox"/> Scars _____ | |
| <input type="checkbox"/> Moustache | <input type="checkbox"/> Markings _____ | <input type="checkbox"/> Drug/Alcohol Problems _____ |
| <input type="checkbox"/> Missing front teeth | <input type="checkbox"/> Piercings _____ | <input type="checkbox"/> Weapons _____ |

RESPONDENT'S RELATIONSHIP TO APPLICANT _____

LOCATION

Residence: COUNTY _____ Business: _____

Street: _____ Street: _____

City: _____ State: _____ Zip: _____ Phone: _____ Hours: _____

Dept: _____ Supervisor: _____

Vehicle: VIN _____ Color: _____ Attorney: _____

Year: _____ Make: _____ Model: _____ Phone: _____

License Plate # _____ State: _____ Exp. _____ Address: _____

Other Contact Information *(List name, address, phone number, relationship, and other helpful information)*

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Name: _____ Phone: _____

Address: _____ Relationship: _____

Other Information: _____

Supreme Court of Texas
Protective Order Taskforce

PO Box 12487
Austin, TX 78711-2487
(512) 463-1463 x 2155
(512) 477-8302 (fax)

RECEIVED
IN SUPREME COURT
OF TEXAS

JAN 06 2005

ANDREW WEBER, Clerk

BY Stewart W. Gagnon Deputy Chair January 5, 2005

Sandra Avila
Cynthia Dyer
Rhonda Gerson
Honorable
Toby R.
Goodman

The Supreme Court of Texas
Attn: Andrew Weber
Clerk of the Court
210 West 14th, Room 104
Austin, Texas 78701

Sue M. Hall re: **Report to the Supreme Court of Texas, Misc. Docket No. 03-9146**

Jeana Lungwitz

Honorable
Patricia Macias

Honorable
Harriet O'Neill

Marcus D.
Taylor

Amy Wright

Dear Mr. Weber:

On behalf of the Supreme Court Protective Order Taskforce (Taskforce), I am providing this report to the Supreme Court summarizing the activities of the Taskforce for the period September 2003 through November 2004. In addition to this written report, Taskforce members are available to meet with the Justices of the Supreme Court of Texas to discuss the activities or to answer any questions.

Background

In May 2003, the Texas Access to Justice Commission and the Family Law Section of the State Bar of Texas requested that the Supreme Court create the Protective Order Taskforce to develop a protective order kit for victims of domestic violence. The Court entered an order establishing the Protective Order Taskforce on September 9, 2003, appointing members and outlining three tasks: (1) draft a domestic violence protective order kit, (2) draft an implementation plan to make the kit available on line and directly from law enforcement officers, and (3) draft a final report to the court.

The Taskforce has completed the draft of the protective order kit and the implementation plan. This report will describe the progress and challenges of the Taskforce, present the kit, and suggest recommendations for making protective orders more accessible. Minutes from each Taskforce meeting and the draft kit are attached to this report as exhibits.

The Taskforce includes the following members from across the state:

Stewart Gagnon, Fulbright & Jaworski, Houston, Chair
Sandra Avila, Children's Rights, Texas RioGrande Legal Aid, Edinburg
Cynthia Dyer, Assistant District Attorney, Dallas
Rhonda Gerson, Texas Access to Justice Commission, Houston
Hon. Toby R. Goodman, Texas House of Representatives, Arlington
Sue M. Hall, Attorney at Law, San Antonio
Jeana Lungwitz, University of Texas School of Law, Austin
Hon. Patricia Macias, Judge, 388th District Court, El Paso
Hon. Harriet O'Neill, Supreme Court of Texas, Austin
Marcus D. Taylor, Wood County District Attorney, Quitman
Amy Wright, Women's Advocacy Project, Austin

The Taskforce received staffing and support from the Texas Access to Justice Commission and Texas Lawyers Care.

Development of the Kit

The Taskforce held its first meeting on October 18, 2003, and immediately began planning the protective order kit. The group identified its task as standardizing forms to be available for non-lawyers who cannot afford a lawyer and would not otherwise have access to the courts. The members also agreed that the forms needed to be easily used by *pro se* applicants, which would involve shortening available forms from other sources as well as providing step-by-step instructions on completing the forms.

In the initial stages of planning the kit, the group reviewed a summary of the Protective Order Survey conducted in 2001 by the Texas Access to Justice Commission. The survey confirmed that a majority of victims of domestic violence in Texas do not have access to protective orders. The survey results were part of the impetus for the creation of this Taskforce.

Amy Wright, Taskforce member from the Women's Advocacy Project (WAP), Austin, continued her work on developing a *pro se* application for protective order, which had begun as a project of WAP and the Texas Access to Justice Commission Assisted Pro Se Committee. This gave the Taskforce a format for development of the other forms for the kit.

The Taskforce investigated and reviewed information from multiple parts of the court systems as it planned the kit. It also researched forms and process used in other jurisdictions, such as Maine, California, Arizona, and Illinois, for protective orders or similar restraining orders available to domestic violence survivors.

Members consulted with local authorities, such as law enforcement officers, judges, prosecutors, and service providers, to learn how domestic violence calls are handled, how

protective orders are issued, and other informal information. In doing so, members also learned when applicants are likely to face barriers to obtaining protective orders. The Taskforce also documented support and enthusiasm for the development of the kit, particularly by judges and service providers, as well as concerns. For a detailed list of people who provided input, please see the attached exhibit, "Collateral Sources."

A wide variety of people provided input during the process, both in writing and by attending meetings. These included district and county judges, prosecutors, county officials, an assistant attorney general and domestic violence advocates who are not attorneys. Chair Stewart Gagnon also made presentations to several groups of judges and bar leaders around the state and got input from them as well.

At various meetings, the Taskforce addressed concerns about the length, content, and possible statutory approval of the forms. It decided to include an application for protective order, temporary *ex parte* protective order, and protective order in the kit. Members also decided that step-by-step instructions would be included as part of the kit. A two-page overview, "All About Protective Orders," became the opening pages for the kit.

The Taskforce carefully reviewed applicable sections of the Texas Family Code, Penal Code, and Rules of Civil Procedure to ensure that the forms included necessary statutory language. Review and input from collateral sources were used to verify this.

Once the court forms were finalized, a special work group, comprised of Taskforce members, met separately numerous times to develop the instructions for each form. The instructions are designed for a *pro se* applicant to follow. All of the forms and instructions utilize check boxes, numbering, and other formatting features to help a reader follow and understand the information. The instructions also include brief information about relevant law and available relief for the applicant. The work group reviewed the entire kit for consistency, length, and other concerns. It also added a sheet for Respondent Information as part of the kit.

The final draft of the kit was reviewed by the entire Taskforce for comments and suggestions. Chair Stewart Gagnon then reviewed submitted comments and finalized the forms along with Taskforce member Amy Wright. The resulting kit contains the following:

1. "All About Protective Orders," a brief overview with procedural tips for the applicant and information on how to contact the Family Violence Legal Line or the website for further help
2. "How to Complete the Application for Protective Order"
3. Application for Protective Order, including Affidavit to support the Application
4. "How to Complete the Temporary Ex Parte Protective Order"
5. Temporary Ex Parte Protective Order
6. "How to Complete the Protective Order"
7. Protective Order
8. Respondent Information

The kit is approximately 22 pages long. The Taskforce believes that the kit is as short as possible while meeting statutory language requirements. Please note that the attached kit is not ready for distribution. First, a reading assessment and revision of the kit must be completed to assure it is written in plain language at a fifth grade reading level. The Taskforce will contract with a firm experienced in projects involving legal documents, and Chair Stewart Gagnon will supervise the project closely to ensure that the integrity of the content is preserved.

Legislative Issues

During the course of the development of the kit, several legislative issues arose. First, the Taskforce noted that cluster courts or foster care courts may deal with a protective order case as part of a child abuse case. However, information from Angela Miranda-Clark, Foster Care Courts Attorney at the Office of Court Administration, suggested that the statute creating the courts would need to be changed for these courts to expand jurisdiction to specifically handle protective orders.

The Taskforce agreed to ask that the Texas Access to Justice Legislative Committee consider working to amending Texas Family Code Section 82.002(a) to insert language under "Who may file application" as follows (proposed changes in italics):

"With regard to family violence under Section 71.0004(1) or (2), an adult member of the family or household may file an application for a protective order, *through a prosecuting attorney, other attorney, or pro se*, to protect the applicant or any other member of the applicant's family or household."

This suggestion was made because there were indications that some judges refused to accept pro se filings of protective orders. However, after the TATJC Legislative Committee considered the question, the Committee decided that pro se litigants already have the absolute right to file and that judges who refuse such filings should be addressed on a case-by-case basis rather than legislatively.

Distribution Plan

The Taskforce determined that the kit would need to be distributed in hard copy format and in electronic format, so that availability in all parts of the state would be maximized. Therefore, the Taskforce applied for a grant from the Texas Bar Foundation for the distribution project.

The Texas Bar Foundation awarded the Taskforce a total of \$26,140. Although less than the application request of \$39,000, the grant will finance: (1) a reading assessment of the kit to assure it is written in plain language at a fifth grade reading level, (2) translation of the entire kit into Spanish, (3) printing and mailing costs for the kit in hard copy and on CD-ROMs, (4) inclusion of the kit and expanded information on the website, and (5) creation of a training video for those who will be helping pro se litigants complete the forms.

The part of the grant request that was not awarded related to the estimated cost for live presentation trainings for the kit. However, the Taskforce anticipates that presentations can be made locally through use of the video mentioned above, as well as through the various efforts of member of the Taskforce and the Family Law Section of the State Bar of Texas.

The Taskforce has developed a distribution list for hard copies and CDs of the kit. The initial distribution should be to:

- All police departments
- All sheriff and constable offices
- All county and district clerks
- All domestic violence programs
- Hospitals (emergency rooms)
- Municipal prosecutors
- All county and district attorneys
- All local bar associations
- All law school clinics
- All legal aid programs
- All pro bono organizations
- All public libraries

With the Court's approval, the Taskforce would like to "launch" the kit during National Crime Victims' Rights Week, April 10-16, through a press conference with Justice O'Neill and others to announce the mass distribution of the kits. The kit should be ready for distribution and posting on the website at the time of the "launch." It will be included on www.texaslawhelp.org.

Costs incurred for the Taskforce have been \$2,226.28 for FY2005 (to date) and \$3,174.18 for FY2004. This yields a total cost to date of \$5,400.46. The Texas Access to Justice Commission paid all costs.

Other Issues

During the course of the Taskforce's work, other issues arose which were of concern to the Taskforce members but were not within the purview of its charge from the Court. These included:

- The Taskforce discussed the need for the forms in the kit to be approved by the Supreme Court or by the Legislature in order to ensure that courts statewide will accept and use them. The Taskforce strongly encourages the Court to formally approve these forms for use statewide, not as the exclusive protective order forms that may be used, but as approved forms that must be accepted.
- The Taskforce noted that the Texas Family Code Section 85.022(b)(5) does not match the amended stalking statute, Texas Penal Code Section 42.072.

- The Taskforce feels that it is imperative to include in the kit a telephone number for pro se litigants to call if they need additional information or assistance. In Texas, the Women's Advocacy Project operates the statewide domestic violence hotline. While the Project is willing to have its number included in the kit, it is concerned that the hotline staff may not be able to handle all the calls for help to the hotline that could be generated by wide distribution of the kit.
- The Taskforce believes it should continue its work for two years to monitor the acceptance of the kit as well as any problems identified.
- The Taskforce should identify any legislative changes and modify the kit accordingly.

Attachments

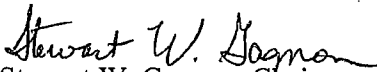
The following documents are attached as part of this report:

1. July 1, 2003 letter from John Jones (Texas ATJ Commission Chair)
2. The Court's September 9, 2003 Order Establishing Protective Order Taskforce
3. Minutes from all of the Taskforce meetings
4. Application for Texas Bar Foundation grant
5. Texas Bar Foundation grant award letter to the Taskforce
6. List of individuals who gave input and suggestions to the Taskforce
7. Final draft of the Protective Order Kit

Summary

On behalf of the Taskforce, I would like to thank the Court for its continued support of this project. We look forward to the launch, distribution, and monitoring of the protective order kit.

Respectfully submitted,


Stewart W. Gagnon, Chair

SWG/ss

attachments

**Supreme Court of Texas
Protective Order Task Force
Minutes of October 18, 2003 Meeting**

Members in attendance (in person)

Stewart Gagnon, Chair
Sandra Avila
Sue Hall
Hon. Patricia Macias
Amy Wright
(by phone)
Rhonda Gerson

Others in attendance (all from Texas Lawyers Care)

Emily Jones
Terri L. Marroquin
Jacqueline Watson

Introductions

Members introduced themselves.

Mission of the Taskforce (Supreme Court Order)

The standardization and simplification of pro se legal forms in order to increase access to the courts is an idea that has been discussed by the Texas Access to Justice Commission (TATJC). Some counties, such as Fort Bend, have created pro se forms with the involvement of the courts. The idea is to expand standardized forms to include protective orders and other family law matters and have them available for non-lawyers who cannot afford a lawyer or would not otherwise have access to the courts. The order of the Supreme Court of Texas is to draft a domestic violence kit. One year is allowed for the completion of the task. Other states have created such a form, but no real model exists in other states simply because Texas law is very different. The issuance of a protective order can have such drastic ramifications, such as loss of child custody or loss of gun permits, that it is difficult for unrepresented Texans to secure a protective order. Thus, a more pro se friendly form is needed, and the form and process should be standardized across the 254 different Texas counties.

Discussion of current status and existing materials

The pro se protective order kit that is currently being developed by the TATJC Assisted Pro Se Committee and the Women's Advocacy Project was reviewed. It was suggested that the length of the protective order application be shortened. It was suggested that by making the form shorter, it would be easier to distribute. The countervailing concern is that a shorter document may not contain enough detail to satisfy the statutory requirements.

It was recognized that there are issues that must be recognized in the protective order form standardization process. One concern is the over-simplification of the form. If the form is too simple, it may be easily overcome by the other party if represented by counsel. The safety of the applicant is also an issue, since it is well established that the issuance of a protective order may heighten the propensity for domestic violence to occur. Also, the applicant may not gain any meaningful access to the courts by the mere issuance of a standardized protective order application; there may still be obstacles to overcome such as the attitude of judges and prosecutors. Finally, the protective order statute itself is very complicated and impedes the creation of a short, simple protective order application that will stand up in court. It was suggested that while the task force moves forward with the task charged to it, the creation of the protective order kit, it should also compile a list of issues and concerns. It was also suggested that the task force should take a holistic approach to the issues of protective orders. Members also suggested looking to the way courts deal with child abuse issues for models.

Plans for next steps

The members agreed to work on the following items before the next meeting:

- Texas Lawyers Care will research the systems for dealing with child abuse cases, will send out to task force members the summary of the protective order survey, and will collect information on Judge Mike Denton's family violence court in Austin
- Emily Jones will email all task force members for their availability for the meeting
- Sandra Avila will send to task force members a summary of the protective order process
- Amy Wright will continue to work on the protective order pro se application and asks all members to send comments regarding the application to her. Amy will also invite a Texas District and County Attorney Association (TDCAA) member to the next meeting
- Judge Patricia Macias will bring to the next meeting copies of the Violence Against Women Act bench card and, with the assistance of Amy Wright, will contact the judge presiding in the county that consistently uses the Women's Advocacy Project protective order pro se packet
- All members are asked to meet with the players involved with protective orders in their locale (judges, prosecutors, service providers, etc.) and see who is using protective order pro se packets

Other business

There was no other business for this meeting.

Select date for next meeting

Depending on the results of the email to be sent by Emily, the next meeting will take place either Friday, January 9, 2004 or Saturday, January 10, 2004 in either San Antonio or Dallas.

The meeting was adjourned.

**Supreme Court of Texas
Protective Order Task Force
Minutes of January 10, 2004 Meeting**

Members in attendance (in person)

Stewart Gagnon, Chair
Sandra Avila
Rhonda Gerson
Hon. Toby Goodman
Sue M. Hall
Jeana Lungwitz
Marcus Taylor
Amy Wright

(by phone)

Hon. Patricia Macias

Others in attendance (all from Texas Lawyers Care)

Emily Jones
Jacqueline Watson

1. **Welcome and Introductions**
2. **Approve minutes from the October 18 meeting**
Sue Hall moved to approve the minutes. The motion passed without opposition.
3. **Reports on tasks assigned at October meeting**
 - a. **Cluster Courts (Roster Care Courts) information**
Emily Jones reported that she spoke with Angela Clark, an attorney with the court. Ms. Clark said that the cluster courts are legislatively created courts that deal with child abuse cases and any other matter so related to the child abuse case with the same docket number. These courts may deal with a protective order as part of a child abuse case, but Ms. Clark felt that if the courts were to expand its jurisdiction to specifically handle protective orders, it would require a change in the statute creating the courts. It was also pointed out that the cluster courts have judges that ride circuit, and therefore would be curtailed from hearing emergency protective orders. There is a new statute, however, that allows emergency protective orders to be received and granted by fax. Stuart Gagnon asked that the task force maintain a list of legislative changes to include in the task force's final report. Emily Jones will contact Mari Kay Bickett of the Center for the Judiciary to get domestic violence bench cards.

that are abusing the protective order process. Sandra Avila reported that magistrates in the valley are not as cooperative, and that the window of time between the arrest for assault family violence and the arraignment is too small to contact victims regarding protective orders. Magistrates usually issue "stay away" orders and do not give the victims enough information for a protective order. In non-arrest cases, the law enforcement officers do not give victims enough information regarding the protective order process. The WAP pro se protective order packets are not used in Cameron or Hidalgo counties, and victims are simply referred to the district attorney's office, which does not accept many cases. The Cameron county clerk indicated to Sandra Avila that if a protective order applicant had been turned down by the district attorney's office and still wanted to apply for a protective order, the district clerk's office would allow the applicant to file the application. Jim Wells County magistrates are not only denying emergency protective orders if there is an indication that the abuser is represented by counsel, there also appears to be a denial of access to the courts to pro se litigants. Stuart Gagnon reported that in Harris County, most protective orders are agreed orders and thus there are few trials. He also suggested that discussion of these issues continue at a later date, so that work on the main task force project, the protective order kit, can continue.

4. **Discussion of revised materials (sent to members in December)**
Emily Jones provided members with a copy of a pro se protective order application and affidavit from Pine Tree Legal Assistance in Maine as a sample of a short application. The members agreed that a longer application was better for tracking the statutory language, and made revisions to the application and affidavit. The members agreed that the application, affidavit, and ex parte order were the only documents that needed to be revised, and that the protective order itself was good as is.
5. **Discussion of ideas to publicize the completed kit**
The members will begin discussions on ways to publicize the completed kit at the next meeting.
6. **Plans for next steps**
 - Amy Wright will distribute the revised application and affidavit to all members.
 - Members should share the latest drafts with judges, lawyers, and advocates for comments.
 - Members should also have members of the public review the drafts for readability.
 - A group of task force members will begin work on the written instructions that will accompany the protective order kit.
 - It was suggested that a video could also be made to accompany the protective order kit, with step-by-step instructions for completing the kit.

b. **Judge Mike Denton's family violence court**

Jacqueline Watson reported that Judge Denton was very interested in assisting the task force. Judge Denton mentioned that the San Diego County Attorney's office had several pro se forms that may be of use to the task force. He will forward this material to the task force. Judge Denton also said that in his experience, there were few pro se litigants in Travis County because most protective order applicants in his court were represented by the county attorney's office. Judge Denton's main concern was ensuring that the pro se protective order form included enough information to facilitate the criminal prosecution of protective order violators. Amy Wright pointed out that Travis County has a high number of applicants represented by either the county attorney's office or one of the four to six programs serving victims of domestic violence. This is not the case in most counties in Texas. Rhonda Gerson described a different system in Harris County, where fewer programs assist a much bigger population, and the county attorney's office does not accept many cases. Furthermore, in Harris County, protective order applications are heard one day per week, in contrast to Dallas County, where protective order applications are heard two days per week. Brewster County judges send pro se clients to shelters to seek assistance with the Women's Advocacy Project (WAP) protective order packet.

c. **Information on judge in county that uses WAP pro se packets**

Amy Wright will research which county clerk routinely returns the packet survey form and find out the judge who is accepting an apparently large number of pro se protective order applications.

d. **Meetings with local players to see who uses the PO pro se packets**

Amy Wright reported that the packets are distributed through courts and sheriffs offices around the state. WAP also receives calls from counties around the state that have no one to assist applicants for protective orders. Marcus Taylor reported that in Quitman, Texas, the magistrate will issue an emergency protective order immediately whenever someone is arrested for assault family violence, and then will send the victim to shelter for assistance with the WAP protective order if the victim wants to apply for a protective order. Also, officers have a "zero-tolerance" policy that results in an arrest any time there is a family violence call. Amy Wright reported that Travis County uses magistrate's orders often, and will encourage a victim to seek a protective order but will defer to the victim's wishes. If there is enough time between the arrest of someone charged with assault family violence and the arraignment, the WAP staff attorney will try to contact the victim of the assault to explain her rights in the protective order process. Travis County magistrates are cooperative with the WAP attorney, and will sometimes even hold arraignments until the WAP attorney speaks with a victim. In addition, WAP has a grant from the Office of Attorney General to bring mandamus actions against counties

It was estimated that the cost for such a video would be around \$10,000. Amy Wright reported that WAP has a video that was created for a similar purpose, and she will bring it to the next meeting.

- For the next meeting, Toby Goodman will invite Richard "Casey" Hoffman, Deputy Attorney General for Families and Children, and Jacqueline Watson will invite Judge Mike Denton.
- Emily Jones will contact Mari Kay Bickett for domestic violence bench cards.
- Texas Lawyers Care will email all members of the Task Force for selection of a final date for the next meeting.

7. Other business

There was no other business.

8. Select date for next meeting

The next meeting will be either Friday, March 26 or Saturday, March 27 in Austin, Texas.

The meeting was adjourned.

**Supreme Court of Texas
Protective Order Task Force
Minutes of March 27, 2004 Meeting**

Members in attendance

Stewart Gagnon, Chair
Sandra Avila
Rhonda Gerson
Hon. Toby Goodman
Sue M. Hall
Jeana Lungwitz
Amy Wright

Others in attendance

Carla Bean (for Cyndi Dyer)
Judge Mike Denton
Ann Kollmorgen
Emily Jones

1. Welcome and Introductions

2. Approve minutes from the January 10 meeting

The minutes were approved as written.

3. Reports on tasks

- a. Emily Jones distributed domestic violence bench cards received from Mari Kay Bickett of the Center for the Judiciary.
- b. Members reported on comments that were collected from judges, prosecutors, family lawyers and advocates for victims of domestic violence. Stewart Gagnon reported that he attended the West Texas County Judges' Association in Midland to discuss the Taskforce's work. The judges were very excited about this project. Stewart is also trying to get the protective order project on the agenda for the Advanced Family Law Training. Emily Jones will ask Justice Harriet O'Neill about help in doing this. Sandra Avila got comments on the draft documents from a judge who thought more space was needed on the forms. Another judge she spoke with was excited about the kit and wanted to use the form right away. Sue Hall said that one Bexar County judge expressed concerns about victims of serious domestic violence proceeding pro se. Another judge said the application should provide more information to prove it up. There is a need for more specific information, including dates, places, and times for an ex parte order. Amber Liddell of Bexar County said the language needs to be simplified. For example, what does "applicant" mean?

Ann Kollmorgen brought a number of suggested changes to the meeting. The group discussed all of them and made changes accordingly. Judge Mike Denton suggested adding a place for fingerprints at the end of the order to add in enforcement.

4. Discussion of statutory approval of forms

Members discussed whether statutory approval of the forms should be pursued. Rep. Goodman said this form could be approved in a bill without limiting use to only this form. The group also discussed statutory changes that would simplify and clarify some confusion in this area that has resulted from previous changes in the law. The group will make a list of suggested statutory refinements to present to the Court in the final report.

5. Plans for next steps

- Amy Wright and Jeana Lungwitz will work on instructions for the kit.
- Amy Wright will send out the revised forms to the group.
- Emily Jones will talk to Judge Lora Livingston about determining grade level of the forms' language
- Emily Jones will check on possibilities for translation into Spanish (Sophia Leon—certified translator in Austin).
- Rhonda Gerson will create a draft plan for dissemination of the kit.
- Everyone will look at the findings issue.
- Sandra Avila will research recent cases on whether findings are required if there is a settlement and no hearing.

6. Other business

There was no other business.

7. Select date for next meeting

The next meeting will be Saturday, May 1 from 10:30 to 2:30 at the Texas Law Center in Austin.

The meeting was adjourned.

**Supreme Court of Texas
Protective Order Task Force
Minutes of May 1, 2004 Meeting**

Members in attendance

Stewart Gagnon, Chair
Sue M. Hall
Jeana Lungwitz
Amy Wright

Others in attendance

Kathy Shafer—Office of the Attorney General
Emily Jones

1. Welcome and Introductions

2. Approve minutes from the March 27 meeting

The minutes were approved as written.

3. Continued work on PO forms based on comments from others

The group discussed whether findings of domestic violence are required for a protective order. Part of the Task Force's work is using the kit to educate and show that findings are required for a PO, even in a situation where there is an agreement.

The group added to its list of other issues to present in its final report to the Supreme Court that the Family Code does not match the new stalking statute.

The group continued to make changes to the order based on received comments and input. Stewart Gagnon agreed to ask Beth Barron for the Harris County checklist of assaultive behaviors. Amy Wright agreed to work on the one-page DPS information form. Jeana Lungwitz agreed to ask the Travis County clerk what law enforcement agency they send protective orders to. Emily Jones will ask the clerks' association if it has a position on this issue.

The group discussed several types of needed instructions, including global information ("What is a Protective Order?"), specific information, and step-by-step information, preferably on-screen with arrows, etc. Sue Hall agreed to talk to Alan Schoolcraft (ProDocs) about possible creation of a document assembly program for the kit.

4. Distribution

The group discussed distribution of the kit. Hard copies will be needed in addition to on-line versions. Include a footer with the date and the location (on-line) to

check for updates. A distribution list should be maintained so that updates can be distributed.

Emily will put together a proposed budget for creation and distribution of the kit, including Spanish translation, low-literacy revision, press kit, CDs, mailing, duplication, publicity and training.

5. Plans for next steps

- Prepare a one-page DPS information form—Amy Wright
- Talk to Travis Co. about which law enforcement they send Protective Orders to—Jeana Lungwitz
- Find out if clerks association has a position on #2—Emily Jones
- Talk to Alan Schoolcraft about document assembly—Sue Hall
- Work on legislative approval of forms--Stewart Gagnon (with Toby Goodman)
- Create a budget for assembly, distribution, translation, publicity for the kit—Emily
- Create first draft of part 1 and 3 of the instructions--Amy and Jeana
- Create first draft of part 2 of instructions (get to Amy and Jeana by May 21)—Emily (TLC)
- Email revised forms (from May 1) to the Taskforce--Emily
- Ask Beth Barron for Harris County checklist of assaultive behaviors--Stewart

6. Other business

There was no other business.

7. Select date for next meeting

The next meeting will be Saturday, June 26 from 10:30 to 2:30 at the Austin office of Fulbright & Jaworski if other members agree.

The meeting was adjourned.

**Supreme Court of Texas
Protective Order Taskforce
Minutes of July 10, 2004 Meeting**

Members in attendance

Stewart Gagnon, Chair
Sandra Avila
Rhonda Gerson
Rep. Toby Goodman
Sue M. Hall
Amy Wright

Others in attendance

Emily Jones

1. Welcome and Introductions

2. Approve minutes from the May 1 meeting

The minutes were approved as written.

3. Report on interactive on-line forms

Sue Hall reported that Alan Schoolcraft with Pro Docs said he will include the Protective Order kit in his Family Law documents and that he will create an interactive version for a website. Sue will ask him what the value of that contribution would be.

4. Related issues

The group added to its list of issues to include in the report to the Supreme Court the issue of the Women's Advocacy Project being able to handle all the calls for help to its hotline that the kit is likely to generate.

Amy Wright said that we need to be thoughtful about back-up.

5. Work on instructions

Amy raised the question of how much information to put in the instructions. She and Jeana Lungwitz met three times for three hours each time to reorganize the narrative instructions, "All About Protective Orders." Then Amy completed work on the narrative that she and Jeana drafted. The other instruction pieces must include step-by-step instructions and a where-to-go, what-to-do part. The members then discussed goals for the instructions and spent the rest of the meeting working on Amy's draft.

6. Plans for next steps

- Emily Jones agreed to have Susan Schoppa, the new attorney at Texas Lawyers Care, talk to Amy and then work on the draft step-by-step instructions for the affidavit, ex parte order and the final order and then email it to the members.
- Emily will send Beth Barron's assaultive behaviors to everyone
- Sue Hall will shorten the general instructions to two pages
- Everyone will look at Amy's long version of the instructions
- Emily will send Rhonda's proposed distribution list to everyone for additions
- Rhonda Gerson will draft a cover letter for the kit
- Rep. Toby Goodman will work with the Legislative Council to draft legislation for approved forms
- Stewart Gagnon will work on the final report to the Court

7. Other business

There was no other business.

8. Select date for next meeting

The next meeting will be Thursday, August 19 from 10:30 to 2:30 at the Texas Law Center.

The meeting was adjourned.

**Supreme Court of Texas
Protective Order Taskforce
Minutes of August 19, 2004 Meeting**

Members in attendance

Stewart Gagnon, Chair
Sandra Avila
Rhonda Gerson
Jeana Lungwitz
Amy Wright

Others in attendance

Emily Jones
Susan Schoppa

1. **Welcome and Introductions**
2. **Updates on various issues/work**

Stewart Gagnon reported that he has made comments to the general overview section that Sue Hall is now editing. He will contact her for follow-up.

Emily Jones reported that Justice O'Neill asked for a rollout date of the kit; Justice O'Neill would like First Lady Perry to be involved in media campaign of rollout.

Members discussed deadlines and potential rollout schedule, in light of fact October is domestic violence awareness month, but no dates were set. Stewart said he anticipated the kit would be completed by September 30, 2004, but not distributed by then.

Stewart has edited draft of cover letter that Rhonda Gerson prepared and will re-circulate it.

Members discussed the compilation of the distribution list. Stewart would like a mail/merge list developed. Members discussed whether constitutional county judges should be added.

Stewart has outline of final report to the Court and will circulate it.

3. **Legislative-related issues**

Stewart and Hon. Toby Goodman have discussed legislative aspects.

Members discussed what legislative changes may/should be proposed regarding Ch. 56 of Code of Criminal Procedure. Amy explained that this is a complicated area and she is not sure that the proposed change is good idea. She is concerned that the Texas ATJ Legislative Committee may not understand the interplay of statutes.

Members discussed changes to Family Code regarding protective orders to strengthen/codify pro se litigants access to courts, in light of some reports that judges do not allow pro se litigants to pursue them.

Amy Wright made a motion to ask that the ATJ Legislative Committee consider changing 82.002(a) to insert language under "Who may file application" as follows [proposed change in italics]:

"With regard to family violence under Section 71.0004(1) or (2), an adult member of the family or household may file an application for a protective order, *through a prosecuting attorney, other attorney, or pro se*, to protect the applicant or any other member of the applicant's family or household."

Jeana Lungwitz seconded the motion. Unanimous vote of support by present members.

4. Approval of minutes

Approved from July 10, 2004 with correction that Amy completed work on the narrative that Jeana and she did, rather than "Amy rewrote it."

5. Bar Grant Application

Emily reported that no feedback has been received.

6. Work on instructions

Members worked on editing the draft instructions for "How to Complete the Application for Protective Order." Amy made the changes to the instructions and some formatting ones to the forms on her laptop compute, as the group agreed on them.

7. Plans for next steps

Susan will follow the style of the newly edited instructions for completing application and draft instructions for the affidavit, temporary ex parte order, and protective order.

8. Next meeting

Members agreed to meet in September, but no date was chosen.

9. Adjournment

COLLATERAL SOURCES

The following individuals and organizations provided input to the Taskforce, in person at Taskforce meetings, through contact with individual Taskforce members, or through written comments:

Elizabeth Barron, Attorney, Harris County District Attorney's Office
Hon. Suzanne Covington, Travis County 201st District Court
Hon. Rudy Delgado, Hidalgo County 93rd District Court
Hon. Mike Denton, Travis County County Court at Law #4
Hon. Alex W. Gabert, Starr County 229th District Court
Hon. Annette Galik, Harris County 245th Family District Court
Hon. Rodolfo "Rudy" Gonzalez, Hidalgo County Court at Law #1
Hon. Jack E. Hunter, Nueces County 94th District Court
Ann Kollmorgen, Attorney, Tarrant County Criminal District Attorney's Office
Amber Liddell, Staff Attorney, Bexar County District Courts
Lori Ann Lima, Public Policy Specialist, TCFV
Linda Magee, Attorney, Travis County Attorney's Office
Laura Martinez, Attorney, Texas RioGrande Legal Aid
Hon. Paul Andrew Mireles, Bexar County 73rd District Court,
Angela Miranda-Clark, Attorney, Foster Care Courts at OCA
Hon. L. Arnoldo Saenz, Jim Wells County Judge
Kathy Shafer, Attorney, Texas Office of the Attorney General
Hon. Sue Sheppard, Associate Civil Judge, Travis County Courts
Hon. Harrison Stafford, Jackson County Judge

West Texas County Judges Association

Public Access to Case Records
SCAC Subcommittee Draft Rule
February 25, 2005

RULES OF JUDICIAL ADMINISTRATION

RULE 14. PUBLIC ACCESS TO CASE RECORDS

14.1 Scope. This Rule covers public access to case records regardless of the physical form of the record.

14.2 Definitions. In this Rule:

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

(b) *Bulk distribution* means the distribution of all, or a portion of information in multiple case records without modification.

(c) *Case record* means a record of any nature in a civil case created by a court or filed by a person in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, how it was created or how it is stored.

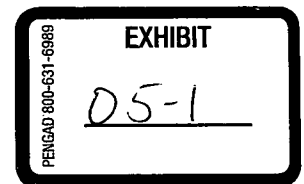
(d) *Compiled information* means information that is collected from more than one individual case record and put in a separate case record.

(e) *Court* means any court created by the Constitution or laws of the State of Texas including justice of the peace and small claims courts, and municipal courts.

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

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

(h) *Remote access* means the ability of a member of the general public to search, inspect, or copy information in a court record by internet or other electronic connection.



(i) “vendor” includes a state, county or local governmental agency that provides information technology services to a court.

14.3 Public Access to Case Records.

(a) **Generally.** Except for a Sensitive Data Form and case records listed in Par. 14.3(b) of this rule, all case records are open to the general public for viewing and copying. Neither the provisions of this rule, nor any procedures adopted by a court or court clerk under this rule, can limit access to case records in any given action or proceeding by

- (i) a party to that action or proceeding, or the party’s attorney,
- (ii) criminal justice agencies for criminal justice purposes, or
- (iii) other persons or entities that are entitled to access by law or court order.

(b) **Exemptions from Public Access.** Neither general public access nor remote public access is permitted to any sensitive data form, and any case record containing information that is excluded from public access by federal law, Texas law, this or any court rule, or a court order.

(c) **Limitations on duties of court or clerk:** A court or court clerk is not required by this rule to do any of the following:

- (i) create a case record not otherwise in written or printed form, other than to print information stored in a computer;
- (ii) retain a case record for a specific period of time beyond that time otherwise required by law; or
- (iii) comply with or respond to a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction. **[Ralph Duggins questions whether this conflict with the requirement of uniform treatment of requests and asks why it is necessary]**

(d) **Exemption for discovery materials and non-adjudicative records:** This rule does not apply to non-filed discovery materials in possession of a party or to court records that are not related to the court’s adjudicative functions including land title records, vital statistics, birth records, naturalization records, voter records, and recorded instruments recorded for public notice.

(e) **Duties of Clerk Upon Subsequent Restriction of Public Access to Case Records.** If, by court order, statute, or rule, a court or court clerk is required to deny public access

to a case record previously available for public access, the court or court clerk is not required to take any action with respect to any previously-made copy of the case record.

(f) Conditions of use. A court or court clerk may make rules to provide for access to case records consistent with the provisions of this rule. The rules may impose reasonable conditions for public access to case records, including,

- (i) an agreement to access the case records in accordance with the local rule,
- (ii) an agreement not to attempt any unauthorized access; and
- (iii) an agreement that the court clerk can monitor the user's access to case records.

Notice of the local rule should be provided in the clerk's office and posted on any court web site. A user's agreement to the conditions of the local rule may be obtained at the court's or court clerk's discretion. The court or court clerk may deny access to case records to a member of the public for past failure to comply with any conditions of use in such local rules.

(f) Inquiry to requestor. Except for requests for bulk distribution or access to compiled information as provided in Par. 14.3(h) of this rule, a member of the public requesting access to a case record may not be asked to disclose the purpose of the request as a condition to granting the request, but a court or court clerk may make reasonable inquiry to establish the identification of the requesting party or to clarify the nature or scope of a request.

(g) Uniform treatment of requests. A court or court clerk must treat all requests for access to case records uniformly.

(h) Bulk Distribution. The only case records a court or court clerk may provide for bulk distribution to the general public are an index, calendar, docket, or register of actions, except that bulk distribution of other case records may be granted to individuals or entities having a bona fide scholarly, journalistic, political, governmental, or other legitimate research purpose, who

- (i) file a request that identifies the requestor and the requestor's research purpose, what information is sought, and how the information requested will be secured and protected;
- (ii) agree to maintain as confidential the identification of specific individuals in the case records; and
- (iii) agree that the court is the owner of the case records and has the exclusive right to control their use.

14.4 Remote Access.

(a) Remote Access permitted: A court or court clerk may allow remote access to case records. If remote access is allowed, procedures for such access must

- (i) provide appropriate security measures, procedures, devices and software to protect the integrity of case records,
- (ii) except for an index, calendar, docket, minute, or register of actions, permit access only by case number, caption, or the first and last name of a party, and
- (iii) otherwise comply with this rule.

(b) Conditions for Remote Access: A court or court clerk that allows remote access may require parties seeking remote access to sign a user's agreement that requires users to register with the court, obtain a log-in and password, and pay a reasonable fee.

(c) Exclusions from Remote Access: Notwithstanding anything in Par. 14.3(a) of this rule, the following case records must be excluded from any system of remote access:

- (i) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;
- (ii) pretrial bail or pre-sentence investigation reports;
- (iii) statements of reasons or defendant stipulations, including any attachments thereto;
- (iv) income tax returns;
- (v) case records in a Family Code proceedings, other than court-created case records; and
- (vi) unpublished or unfiled notes, memoranda, internal communications, and research of judges and court personnel,
- (vi) a sensitive data form as provided by this rule or the Rules of Civil Procedure.

(d) Procedures. Unless otherwise established by local rule, any party that files a case record that contains the type of information that must be excluded from remote access by Par. 14.3(b) or 14.4(c).c of this rule shall – if the court or court clerk permits remote access to case records – state the following on the face of the case record in 36 point type: “CONTAINS INFORMATION EXCLUDED FROM REMOTE ACCESS.” The court or court clerk shall have no obligation to review each case record submitted to determine whether it is a record, or contains such prohibited information or and data.

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

14.5 Sensitive Data.

(a) Form required: All court clerks shall maintain, as a case record, a Sensitive Data Form that records personal information required by statute, rule or regulation be part of a pleading or other case record. The form must be physically separated from other case records. The obligation for completing and filing the Sensitive Data Form lies with the party that files a case record that must contain the sensitive data. The Sensitive Data Form should contain the following information when such information must be part of a case record:

- (i) social security numbers;
- (ii) bank account, credit card, or other financial account numbers,
- (iii) driver's license numbers, passport numbers, or similar government-issued identification card numbers, excluding attorney state bar numbers;
- (iv) date of birth;
- (v) the address and phone number of a person who is a crime victim, as defined by Article 56.32, Code of Criminal Procedure, in the proceeding in which the case record is filed or in a related proceeding; and
- (vi) the name and address of a minor child

(b) No Access Permitted: A sensitive data form is not available for public access in any form.

(c) Pleading Sensitive Information Prohibited: Unless otherwise ordered by the court or required by rule or statute, any party filing a pleading or any other case record (other than a Sensitive Data Form) shall not include therein any sensitive data listed in Rule 14.5(a), whether filed in written or in electronic form, regardless of the person to whom the sensitive data relates.

If reference to any of the following items of sensitive data is required by rule or statute, or ordered by a court, to be in pleading or other case record filed with the court, the party filing such pleading or case record shall refer to that sensitive data by reference to its location in the Sensitive Data Form and in abbreviated form in the case record as follows:

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

(ii) Names of Minor Children. If the name of a minor child must be mentioned in a case record, only that child's initials should be used.

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

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

The responsibility for omitting sensitive data from case records filed with the court (other than a Sensitive Data Form) lies with the party filing the case record. Neither the court nor the court clerk has any obligation to review each pleading or other case record for compliance with this rule.

14.6 Disallowing Public Access on Motion. On its own motion or in response to an application by any interested party, a court where a case record is filed may disallow general public access or remote access to a case record that contains sensitive data disallows access to sensitive data in a case record or exhibit.

14.7 Sanctions. A court may impose just sanctions on any party failing to comply with the provisions of Rule 14.4 or Rule 14.5. The court may also order a party to redact sensitive information included in a case record (or an attachment or exhibit to a case record) in violation of this rule.

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

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

- the cost prescribed by statute, or

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

14.10 Contracts with vendors providing information technology services. If a court clerk contracts with a vendor to provide technical support to gather, store, or provide public access to case records, the contract must, in addition to all other legal requirements,

- require the vendor to comply with the provisions of this Rule.
- prohibit the vendor from making bulk distribution of case records or from disseminating compiled information, except as provided by this Rule.
- require the vendor to acknowledge that case records remain the property of the court and are subject to the directions and orders of the court with respect to the handling of and public access to the case records, as well as the provisions of this Rule.

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

- describe in detail the deviation requested;
- describe the purpose for the deviation; and
- identify the benefits and detriments of the deviation.

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



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NOV 4 2004

The Supreme Court of Texas

Lisa Hobbs, Rules Attorney

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November 2, 2004

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

Re: Proposed Rule of Judicial Administration 14

Dear Chip:

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

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

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

Kindest Regards,

A handwritten signature in black ink, appearing to read "Lisa Hobbs".

Lisa Hobbs
Rules Attorney

Enclosures (3)

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

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



**PUBLIC ACCESS TO COURT CASE
RECORDS IN TEXAS**

**A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -**

August 2004



TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 936-2423
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HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

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

August 30, 2004

Chief Justice and Justices
The Supreme Court of Texas

Ladies and Gentleman:

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

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

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

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

Sincerely,

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



TEXAS JUDICIAL COUNCIL

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Chief Justice, Supreme Court

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

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

July 16, 2004

Members, Texas Judicial Council

Dear Members,

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

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

1. The Texas Supreme Court (Court) should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format for each matter in which this information must be included. The form would include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child. References to the sensitive data in any pleading or party filing would be made in an abbreviated format as specified by the Court. The form would be exchanged among parties and attorneys and be filed at the courthouse but not be made available to the public.
2. The Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While several members recommend that public access to paper documents and electronic documents be treated the same, some of those members acknowledged that there may be some information that is not appropriate for internet publication and that should be made confidential both at the courthouse and on the internet.

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

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

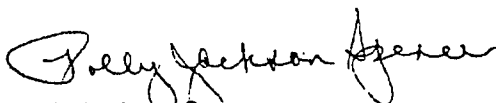
Alternative I: Open Remote Access. Treat remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should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

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

- (1) Only court-created records (e.g., indexes, court calendars, dockets) may be accessible by remote electronic means.
- (2) Remote access to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.
- (3) Regardless of whether a subscriber-type system is in place, the following case records should be excluded from remote access: (a) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records; (b) pretrial bail or presentence investigation reports; (c) statements of reasons or defendant stipulations in criminal proceedings, including any attachments thereto; and (d) income tax returns.
- (4) Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, should be excluded from remote access.

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

Sincerely,



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



**PUBLIC ACCESS TO COURT CASE
RECORDS IN TEXAS**

**A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -**

August 2004

TEXAS JUDICIAL COUNCIL

COMMITTEE ON PUBLIC ACCESS TO COURT CASE RECORDS

ACKNOWLEDGMENTS

Judicial Council Members

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

Non-Council Members

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

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

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

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

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

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

II. Committee Charge

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

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

III. Committee Deliberations

The Need for Guidance

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

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

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

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

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

Public Trust and Safety

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

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

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

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

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

Benefits of Remote Access

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

Identity Theft

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

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

Court-Created Documents

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

Party and Non-Party filings

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

IV. Federal Policy Development

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

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

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

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

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

- 1. Extend current open access policies to cover electronic case files.** This approach would follow the belief that electronic case files should be treated the same as paper files. There would be no restriction on remote access. Litigants and others would have to assert their privacy interests with appropriate motions.
- 2. Review the elements of the "public" case file to better accommodate privacy interests.** This approach would evaluate the need to include specific information or documents in the public case file, whether in paper or electronic format. A new definition of the "public case file" would need to be developed to better accommodate privacy interests. Like alternative #1, this approach assumes that the entire public case file would be made available electronically without restriction. Private or sensitive information would be excluded from the public case file, whether in paper or electronic format.
- 3. Provide limited access to certain electronic case file information to address privacy concerns.** Under this approach, judicial leaders would limit remote electronic access by identifying categories of case file information or specific documents that may implicate privacy concerns. Remote electronic access might be limited depending on the level of access granted to a particular individual. For example, judges and court staff would have unlimited access, while litigants and attorneys would have unrestricted access to the files relevant to their own cases. The public would have remote electronic access to a subset of the entire case file that includes pleadings, briefs, orders, and opinions. This

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

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

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

▶ General Principles:

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

▶ Civil Cases: Documents in civil case files should be made available electronically to the same extent that they are available at the courthouse except that Social Security cases should be excluded from electronic access and certain "personal data identifiers" should be modified or partially redacted by the litigants. These identifiers are social security numbers (only the last four digits should be used), dates of birth (only the year should be used), financial account numbers (only the last four digits should be used) and names of minor children (only the initials should be used).

▶ Criminal Cases: Public remote electronic access to criminal case documents is prohibited.

▶ Bankruptcy Cases: Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; Section 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended to allow the court to collect a debtor's full Social Security number but display only the last four digits.

▶ Appellate Cases: Appellate case files are to be treated the same as lower level cases. The *case file*, whether electronic or paper, is defined as the collection of documents officially filed by the litigants or the court in the context of litigation, the

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

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

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

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

V. State Court Policy Development

a. Model Policy

In an effort to provide guidance to and consistency among state judiciaries, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) issued the CCJ/COSCA Guidelines in August 2002.¹¹ The project "Developing a Model Written Policy for Access to Court Records," was funded by the State Justice Institute and staffed by the National Center for State Courts and the Justice Management Institute. The model policy provides a framework from which judicial leaders can develop their own public access policy. The CCJ/COSCA Guidelines are based on the following premises:

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

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

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

b. Other State Policies

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

Arizona

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

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

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

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

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

California

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

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

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

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

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

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

Florida

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

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

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

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

Indiana

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

Maryland

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

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

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

¹⁶ See Maryland's *Report of the Committee on Access to Court Records*, pg. 6 (2002).

¹⁷ *Id.* at 11.

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

Massachusetts

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

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

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

¹⁸ See Maryland Rule 16-1002. General Policy.

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

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

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

Minnesota

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

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

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

²² *Id.* at 42.

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

Missouri

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

New York

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

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

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

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

Utah

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

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

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

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

Vermont

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

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

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

Washington

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

records are to be made available on a case-by-case basis and a court-by-court basis. All access to JIS information is subject to the availability of data, specificity of the request, potential for infringement of personal privacy created by release, and potential disruption of the internal ongoing business of the courts. Although, it provides that compiled reports are generally not disseminated if they contain information which permits a person, other than a judicial officer or attorney, to be identified as an individual, this section of the policy has been informally abrogated and will be formally superseded if GR 31, described below, is adopted. The privacy and confidentiality policies are as follows:

records that are sealed, exempted or otherwise restricted by law or court rule may not be released except by court order and confidential information regarding individual litigants, witnesses, or jurors that is collected for internal administrative operations of the courts will not be disseminated, including, but not limited to, credit card and PIN numbers, social security numbers, residential addresses and phone numbers.

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

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

Wisconsin

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

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

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

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

VI. Recommendations

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

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

- The form should include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child.
- Unless otherwise ordered by the court, any party filing a pleading or other document with the court should not include any sensitive data in such pleading or document, whether filed on paper or in electronic form, regardless of the person to whom the sensitive data relates.
- Unless otherwise ordered by a court, if reference to any sensitive data is necessary in a pleading or other case record filed with the court, the filing party should refer to that sensitive data as follows: if a social security number or financial account number of an individual must be included in a case record, only the last four digits should be used; if the involvement of a minor child must be mentioned in a case record, only that child's initials should be used; and if a date of birth must be included in a case record, only the month and year should be used. However, the Committee recommends further study regarding the reference to a date of birth or to the name of a minor child.
- The responsibility for omitting or redacting from those documents filed with the court the sensitive data identified above should rest solely with counsel

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

- Unless otherwise ordered by the court, the form should not be accessible to the general public either remotely or at the courthouse.
- Unless otherwise ordered by the court, the parties should be required to copy one another with the form.

2. Remote Access Policy.²⁵ The policy treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:

(1) Court-Created Records. Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.²⁶

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

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

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

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

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

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

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

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

3. **The Texas Judicial Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While some members recommend that access to paper documents and electronic documents be the same, they acknowledge that there may be records (e.g., medical, psychological and psychiatric reports, tax returns, and defendant stipulations) or proceedings (e.g., child custody disputes, adoption or divorce proceedings) that are not appropriate for internet publication and should therefore be made confidential both at the courthouse and on the internet.²⁹ The committee should examine and make recommendations to protect victims of sexual assault, domestic violence, stalking, or other such victims from being identified and located by use of the information contained in public court records.**
4. **The Texas Judicial Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.**

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

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

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

Appendix A

Minutes of Meetings

December 11, 2003

February 25, 2004

April, 27, 2004

May 13, 2004

June 16, 2004

July 13, 2004



TEXAS JUDICIAL COUNCIL

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Chief Justice, Supreme Court

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

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

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

December 11, 2003

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

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

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

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

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

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

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

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

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

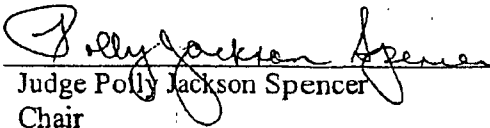
Committee members then addressed the potential harms resulting from unlimited online access to court records including identity theft; the dissemination of sensitive personal and medical information; decreases in jury participation; the use of court information by data collection and sales companies;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

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

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

ADJOURNMENT

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



Judge Polly Jackson Spencer
Chair



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Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

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

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

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

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

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

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

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

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

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

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

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

Bulk Dissemination

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

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

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

A Prospective or Retrospective Rule

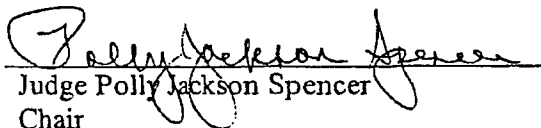
Judge Spencer stated that any rule adopted by the Committee should apply only to documents filed after the enactment of the rule because of the exorbitant redaction costs associated with a retrospective rule. Mr. Gavin stated that the Committee should consider a transition strategy when implementing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

NEXT MEETING

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

ADJOURNMENT

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



Judge Polly Jackson Spencer
Chair



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

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

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

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

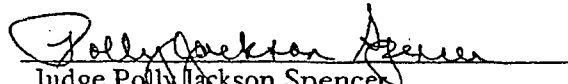
Mr. Baccarise made a motion to adopt the draft rule as presented as a working document to be used as a foundation to outline more specific policies as the Committee's work progresses. That motion was adopted by a non-record vote.

NEXT MEETING

The Committee will meet again in early May or early June.

ADJOURNMENT

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


Judge Polly Jackson Spencer
Chair



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Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

May 13, 2004

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

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

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

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

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

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

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

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

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

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

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

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

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

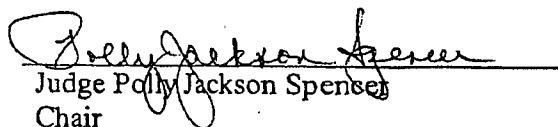
The membership briefly discussed bulk distributions of information, but tabled the discussion until future meetings.

NEXT MEETING

The Committee will meet again in June.

ADJOURNMENT

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


Judge Polly Jackson Spence
Chair



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MS. ELIZABETH KILGO, J.D.

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

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

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

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

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

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

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

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

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

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

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

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

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

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

Committee on Public Access to Court Records
Minutes of Meeting
June 16, 2004
Page 3 of 3

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

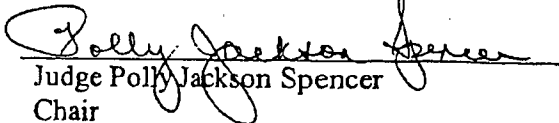
Judge Spencer then asked the Committee members to be ready to vote on substantive motions at the next meeting.

NEXT MEETING

The Committee will meet again on June 29.

ADJOURNMENT

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


Judge Polly Jackson Spencer
Chair



TEXAS JUDICIAL COUNCIL

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

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

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

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

July 13, 2004

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

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

ATTENDANCE OF MEMBERS

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

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Mr. Lance Byrd	President & CEO, Sendero Energy, Inc.
Ms. Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Ms. Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

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

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

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

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

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

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

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

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

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

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

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

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

- (1) *Court-Created Records.* Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.
- (2) *Case Records other than Court-Created Records.* Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.
- (3) *Specific Types of Records.* Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:
 - (a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records
 - (b) Pretrial bail or presentence investigation reports;
 - (c) Statements of reasons or defendant stipulations, including any attachments thereto; and
 - (d) Income tax returns.
- (4) *Family Code Proceedings.* Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, are extremely sensitive and should be excluded from *remote access* by the general public.

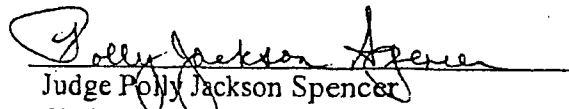
Upon proper motion and discussion, the Committee adopted a motion to recommend to the Council that a new committee be formed to determine whether additional case records or proceedings should be closed at the courthouse. While some members felt that public access to paper documents and electronic documents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

NEXT MEETING

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

ADJOURNMENT

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


Judge Polly Jackson Spencer
Chair

Appendix B

Confidential Court Case Records in Texas

Current Statutory Protections/Requirements in Texas

a. Permanent Protection from Public Access

Abortion §33.003 Family Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Order of Withholding §8.152 Family Code On request, the court may exclude 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.

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

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

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

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

b. Temporary Protection from Public Access

Birth Records §552.115 Gov't Code – until the 75th anniversary of the date of birth

Death Records §552.115 Gov't Code until the 25th anniversary of the death

Dissolution of Marriage Pleadings §6.410 & §102.0086 Family Code – (Harris County) until after the date of service of citation or the 31st day after the date the suit was filed.

Protective Orders/Temporary Ex Parte Orders Applications §82.010 Family Code – (Harris County) until after the date of service of notice of the application or the hearing date/until after the date the respondent is informed of the court's order

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

Final Orders in SAPCR Suits §105.006 Family Code- other than termination or adoption orders

Child Support Lien Notice §157.313

Child Support Petition for Modification §159.311

Suspension of License Petition §232.005

Name Change §45.102 Family Code - or must provide a reason for exclusion

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

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

Appendix C

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

CONFIDENTIAL INFORMATION FORM (INFO)

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

- Divorce/Separation/Invalidity/Nonparental Custody/Paternity/Modifications Other
- Domestic Violence Antiharassment Information Change (Check if you are updating information)
- A restraining order or protection order is in effect protecting the petitioner the respondent the children.
- The health, safety, or liberty of a party or child would be jeopardized by disclosure of address information because: _____

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

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

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

1) Child's Name (Last, First, Middle)

Child's Race/Sex/Birthdate

Child's Soc. Sec. No. (If required)

Child's Present Address or Whereabouts

2) Child's Name (Last, First, Middle)

Child's Race/Sex/Birthdate

Child's Soc. Sec. No. (If required)

Child's Present Address or Whereabouts

List the names and present addresses of the persons with whom the child(ren) lived during the last five years:

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

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

Additional information: _____

Addendum To Confidential Information Form is attached.

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

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

 Petitioner/Respondent

ADDENDUM TO CONFIDENTIAL INFORMATION FORM (AD)			
County:		Cause Number:	
COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT			Do not file in a public access file.
The following information about additional parties is required in all cases.			
Additional Petitioner Information		Type or Print only	Additional Respondent Information
Name (Last, First, Middle)		Name (Last, first, Middle)	
Race	Sex	Birthdate	Race Sex Birthdate
Drivers Lic. or Identocard (# and State)		Drivers Lic. or Identocard (# and State), (or, if unavailable, residential address)	
Mailing Address (P.O. Box/Street, City, State, Zip)		Mailing Address (P.O. Box/Street, City, State, Zip)	
Relationship to Child(ren)		Relationship to Child(ren)	
The following information is required if there are additional children involved in the proceeding (Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment).			
3) Child's Name (Last, First, Middle)			
Child's Race/Sex/Birthdate			
Child's Soc. Sec. No. (If required)			
Child's Present Address or Whereabouts			
4) Child's Name (Last, First, Middle)			
Child's Race/Sex/Birthdate			
Child's Soc. Sec. No. (If required)			
Child's Present Address or Whereabouts			
Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:			
Additional Petitioner Information		Additional Respondent Information	
Soc. Sec. No.:		Soc. Sec. No.:	
Residential Address (Street, City, State, Zip)		Residential Address (Street, City, State, Zip)	
Telephone No.:		Telephone No.:	
Employer:		Employer:	
Empl. Address:		Empl. Address:	
Empl. Phone No.:		Empl. Phone No.:	

**SUPERIOR COURT OF WASHINGTON
COUNTY OF**

In re:

and

Petitioner(s),

Respondent(s).

NO.

**SEALED FINANCIAL SOURCE
DOCUMENTS
(SEALFN)
CLERK'S ACTION REQUIRED**

SEALED FINANCIAL SOURCE DOCUMENTS

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

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

Submitted by:

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

Appendix D

Public Access to Case Records Draft Rule

Public Access to Case Records Draft Rule

RULES OF JUDICIAL ADMINISTRATION

RULE 14. PUBLIC ACCESS TO CASE RECORDS

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

14.2 Definitions. In this Rule:

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

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

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

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

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

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

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

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

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

14.3 Authority and Applicability.

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

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

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

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

14.4 Public Access to Case Records.

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

- (1) create a case record, other than to print information stored in a computer;
- (2) retain a case record for a specific period of time beyond that time otherwise required by law; or
- (3) respond to or comply with a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in



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Chief Justice, Supreme Court

DIRECTOR:

MS. ELIZABETH KILGO, J.D.

VICE CHAIR:

HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

February 7, 2005

Justices, Supreme Court of Texas
Members, Supreme Court Rules Advisory Committee

Ladies and Gentleman:

In August 2004, the Texas Judicial Council submitted to our Court a report entitled *Public Access to Court Case Records in Texas*. As discussed in that report, the Council examined the personal privacy and public safety implications that arise when court case records are made available to the public on the internet. After conducting extensive research and holding seven public hearings on the issue, the Council recommended that the Supreme Court of Texas implement a Sensitive Data Form and Remote Access Policy. As you know, our Court forwarded the Council's report and recommendations to the Supreme Court Advisory Committee in November 2004.

During the Council's January 18, 2005 public hearing, Lisa Hobbs informed the Council that the chair of the Advisory Committee had referred the Council's report to the Subcommittee on Rules of Judicial Administration for study. Several Council members expressed their concern that presently court clerks across the state are placing case records that may contain sensitive or personal information on the internet without any guidance from our Court. Given the Council's sense of urgency and unanimous support for the Sensitive Data Form, the Council felt compelled to recommend that our Court expedite the rulemaking process to implement the Data Form as soon as possible.

Thank you for your prompt attention to this matter.

Sincerely,

Wallace B. Jefferson
Chair, Texas Judicial Council
Chief Justice, Supreme Court of Texas

B. Findings from Survey of State Court Administrators

Prior to discussing the findings of the survey of state court administrators, it first must be noted that the data from these surveys found in Tables 1, 2 and 3 was collected and analyzed in September 2004. The issues of public access and privacy interests in electronic access policies governing court records were being debated in most states while this research paper was being written and many of the states responding to the survey of state court administrators have policies that were in some stage of development by their administrative offices or review by their states' highest courts. States that had electronic access policies already in place were also undergoing additional review of their existing policies with privacy interests at issue. By publication date of this research paper, May 2005, it is expected that the work of these states on their electronic access policies will have continued and the reader is advised to contact the respective state court administrative offices for updated information on that state's policy development and adoption.

Most notably, the surveys demonstrated that of the 40 state court administrative offices that responded, 33 (83%) have statewide electronic access to court records policies in place or in some stage of development. Significantly, 85% of those policies have either been adopted since 2002, when the CCJ/COSCA guidelines were published, or are currently undergoing review. All but one are the creation of the state court administrator's office or a committee appointed by the state's highest court; Virginia's policy was developed by a legislative committee. Most (70%) provided a period of public comment in the policy development process.

With the exception of a very few, most courts responding to the survey do not publish pleadings or motions online. Rather the documents that receive the most public exposure via electronic access are those created by the court itself – its dockets, calendars, indexes, registers

of actions, and case dispositions. Only 12% of the responding states indicated that images of actual documents filed by parties with the court were made available by electronic access. Access to these documents in the other 88% of responding states' court files are still publicly available, but require an in-person visit to the courthouse to view the paper file or a public access terminal. Kentucky described its rationale on the differences in its policy based upon the distinctions between accessing electronic and paper records:

The position of the Kentucky Court of Justice was simple – one requires you to go to a certain building to access the information and the Internet made the information available to the world. Restrictions are applied if you go to the courthouse by distance, hours of operation, operational needs of the court, etc. We simply applied reasonable restrictions based on the business interests of the court and public needs for access to the information.¹

Of those state court systems that have electronic access policies and completed the survey, there were few states that restricted access based on use of the information or provided different levels of access to information for different users. Some courts, however, did provide more information to members of the state bar in good standing and executive branch law enforcement officers, than they provided to the public. Also, some state statutes prohibited commercial use of information acquired through the courts' electronic access systems. Most state courts that responded do provide bulk data access to court record information (65%). Seventy-nine percent of state courts that provide electronic access and completed the survey, charge a fee for electronic access to the court's records.

A copy of the blank survey distributed to the members of the Conference of State Court Administrators is found at Appendix I. Tables 1, 2 and 3 follow this discussion and provide a

1. Survey response from Ed Crockett, General Manager, Pretrial Services, Kentucky Administrative Office of the Courts.

comparative view of the survey responses. A more detailed examination of four of these states' policies and the processes used to develop those policies is described in the next section.

TABLE 1 – State Court Administrator Survey – Electronic Access Policy Development

STATES	Responded to Survey.	Provides Statewide Electronic Access	Has Statewide Electronic Access Policy	Policy Implemented (Revised)	Policy Development Process	Opportunity for Public Comment	Current Status of Policy
Alabama	Yes	Yes	Yes	1988	AOC	No	Implemented
Alaska	Yes	Yes	Yes	1994	AOC	No	Committee review (S.Ct. appt'd 2003)
Am. Samoa	No						
Arizona	Yes	Yes	Yes	1997 (1999) (draft 2002)	Ct. Comm.	Yes	Under review (approval in 2005)
Arkansas	Yes	No	No (developing)	N/A	N/A	N/A	In development
California	Yes	Yes	Yes	2002 (2004)	Jud. Council	Yes	Adopted
Colorado	Yes	Yes	Yes	1998	Ct. Comm.	Yes	Under revision
Connecticut	Yes	Yes	Yes	2004	AOC	Yes	Adopted
Delaware	No						
D.C.	No						
Florida	No						
Georgia	Yes	No	Yes (by statute)				Under review
Guam	Yes	Yes	No (developing)				In development
Hawaii	Yes	Yes	No (developing)	(draft 2004)	AOC	Yes	Under review
Idaho	Yes	No	Yes (by rule)				Under review
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	Yes	No	No (developing)	N/A	AOC	Unknown	In development
Kentucky	Yes	Yes	Yes	2001	AOC	No	Adopted
Louisiana	No						
Maine	Yes	No	No (developing)	N/A	Ct. Comm.	Yes	In development
Maryland	Yes	Yes	Yes	2004	Ct. Comm.	Yes	Adopted
Massachusetts	No						
Michigan	Yes	No	No	N/A	N/A	N/A	N/A
Minnesota	Yes	Yes	Yes	1987 (draft 2004)	Ct. Comm.	Yes	Under review
Mississippi	No						
Missouri	Yes	Yes	Yes	1998 (2000)	Ct. Comm.	Unknown	Adopted

TABLE 1
State Court Administrator Survey
Electronic Access Policy Development

TABLE 1 (cont.) – State Court Administrator Survey – Electronic Access Policy Development

STATES	Responded to Survey	Provides Statewide Electronic Access	Has Statewide Electronic Access Policy	Policy Implemented (Revised)	Policy Development Process	Opportunity for Public Comment	Current Status of Policy
Montana	Yes	No	No	N/A	N/A	N/A	N/A
Nebraska	Yes	Yes	Yes	2003	Ct. Comm.	No	Adopted
Nevada	Yes	No	No	N/A	N/A	N/A	N/A
New Hampshire	Yes	No	No (developing)		Ct. Comm.	Yes	In development
New Jersey	Yes	Yes	Yes	1996	Ct. Comm.	Yes	Adopted
New Mexico	No						
New York	No						
North Carolina	Yes	Yes	Yes	Unknown	AOC	Unknown	
North Dakota	Yes	Yes	No (developing)		Ct. Comm.	Unknown	Under review
No. Mariana Isl.	Yes	No	No	N/A	N/A	N/A	N/A
Ohio	Yes	Yes	No (developing)		Ct. Comm.	Unknown	In development
Oklahoma	No						
Oregon	Yes	Yes	Yes	1991 (2003)	AOC	No	Implemented
Pennsylvania	Yes	Yes	Yes	1994 (1997)	AOC	No	Adopted; new policy in review
Puerto Rico	No						
Rhode Island	Yes	Yes	Yes	2002 (draft 2004)	AOC	Yes	Under review
South Carolina	Yes	No	No	N/A	N/A	N/A	N/A
South Dakota	Yes	No	Yes	2004	AOC	Yes	Adopted
Tennessee	Yes	No	No	N/A	N/A	N/A	N/A
Texas	Yes	No	No (developing)	(draft 2004)	Ct. Comm.	Yes	Under review
Utah	Yes	Yes	Yes	1996 (draft 2004)	Ct. Comm.	Yes	Under review
Vermont	Yes	Yes	Yes	2002	Ct. Comm.	Yes	Promulgated
Virginia	Yes	Yes	No (developing)		Leg. Comm.	Unknown	In development
Virgin Islands	No						
Washington	Yes	Yes	Yes	1995 (1999)	Ct. Comm.	Yes	Under review
West Virginia	No						
Wisconsin	Yes	Yes	Yes	2003	AOC	No	Implemented
Wyoming	Yes	No	No	N/A	N/A	N/A	N/A

TABLE 1 (cont.)
State Court Administrator Survey
Electronic Access Policy Development

TABLE 2 – State Court Administrator Survey – Information Available by Electronic Access and Method of Access

STATES	Responded to Survey	Information Available Electronically	Information Restricted from Electronic Access	Method of Access	Bulk Data Electronic Access	Bulk Data Restricted	Distribution Method of Bulk Data
Alabama	Yes	Case info.	No	Internet	No	N/A	N/A
Alaska	Yes	Not decided	Not decided	Unknown	Yes	Unknown	Unknown
Am. Samoa	No						
Arizona	Yes	Case docs, hist.	Yes	Not online	Yes	Non-confid.	Download
Arkansas	Yes	N/A	N/A	N/A	N/A	N/A	N/A
California	Yes	Civil case docs Other-docket	Yes	Internet	No	N/A	N/A
Colorado	Yes	ROA's	Yes	Internet	No	N/A	N/A
Connecticut	Yes	Docket info.	Yes	Internet	Yes	Yes	CD
Delaware	No						
D.C.	No						
Florida	No						
Georgia	Yes	Not decided	Not decided	Not decided	Not decided	Not decided	Not decided
Guam	Yes	Docket info.	Yes	Internet	Yes	Yes	Unknown
Hawaii	Yes	Docket info.	No	Internet	Yes	Yes	Tape, FTP
Idaho	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	Yes	Docket info.	Yes	Internet	No	N/A	N/A
Kentucky	Yes	Docket info.	Yes	Internet	No	N/A	N/A
Louisiana	No						
Maine	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Maryland	Yes	Docket info.	No	Internet	Yes	Unknown	Unknown
Massachusetts	No						
Michigan	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Minnesota	Yes	Ct-created docs	Yes	Internet	Yes	Yes	Unknown
Mississippi	No						
Missouri	Yes	Docket info.	Yes	Internet	No	N/A	N/A

TABLE 2
State Court Administrator Survey
Information Available by Electronic Access and Method of Access

TABLE 2 (cont.) – State Court Administrator Survey – Information Available by Electronic Access and Method of Access

STATES	Responded to Survey	Information Available Electronically	Information Restricted from Electronic Access	Method of Access	Bulk Data Electronic Access	Bulk Data Restricted	Distribution Method of Bulk Data
Montana	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	Yes	Docket info.	Yes	Internet	No	N/A	N/A
Nevada	Yes	N/A	N/A	N/A	N/A	N/A	N/A
New Hampshire	Yes	N/A	N/A	N/A	N/A	N/A	N/A
New Jersey	Yes	Docket info.	No	Publ.term/ dial-up	Yes	No	Tape or CD
New Mexico	No						
New York	No						
North Carolina	Yes	Chg/dispo.	Yes	Publ.term.	Yes	Yes	Unknown
North Dakota	Yes	Docket info.	Yes	Internet	Yes	No	Download
No. Mariana Isl.	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Ohio	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Oklahoma	No						
Oregon	Yes	Docket info.	Yes	Internet	Yes	No	Monthly CD
Pennsylvania	Yes	Docket info.	Yes	Internet	Yes	Unknown	Unknown
Puerto Rico	No						
Rhode Island	Yes	Case info.	Yes	Internet	Yes	No	Monthly CD
South Carolina	Yes	N/A	N/A	N/A	N/A	N/A	N/A
South Dakota	Yes	Case info.	Yes	N/A	No	N/A	N/A
Tennessee	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Texas	Yes	Not decided	Not decided	Internet	Not decided	Not decided	Not decided
Utah	Yes	Case histories	Yes	Internet	Yes	Yes	Varies
Vermont	Yes	Docket info.	Yes	Internet	No	N/A	N/A
Virginia	Yes	Case abstracts	Yes	Internet	Yes	Unknown	File transfer
Virgin Islands	No						
Washington	Yes	Docket info.	No	Internet	Yes	Yes	Qtrly. FTP
West Virginia	No						
Wisconsin	Yes	Docket info.	Yes	Internet	Yes	No	Download
Wyoming	Yes	N/A	N/A	N/A	N/A	N/A	N/A

TABLE 2 (cont.)
State Court Administrator Survey
Information Available by Electronic Access and Method of Access

TABLE 3 – State Court Administrator Survey – Access by User, Use of Information, and Fee Information

STATES	Responded to Survey	Electronic Access Available by the Public	Access by Selected Users Only	Different Level of Access by Different Users	Restriction on Access Based on Use	Method of Restriction	Fees for Access
Alabama	Yes	Yes	No	No	No	N/A	Yes, varies
Alaska	Yes	Not yet	Not decided	Not decided	Not decided	Not decided	Not decided
Am. Samoa	No						
Arizona	Yes	Yes	No	No	No	N/A	For bulk data (programming)
Arkansas	Yes	N/A	N/A	N/A	N/A	N/A	N/A
California	Yes	Yes	No	No	No	No	No
Colorado	Yes	Yes	No	Yes	On compiled data requests	Written agreement	Yes
Connecticut	Yes	Yes	Yes	Yes	No	N/A	For bulk data
Delaware	No						
D.C.	No						
Florida	No						
Georgia	Yes	Not decided	Not decided	Not decided	Not decided	Not decided	Not decided
Guam	Yes	Yes	Yes	Yes	No	N/A	Not decided
Hawaii	Yes	Yes	No	No	No	N/A	For bulk data
Idaho	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	No						
Indiana	No						
Iowa	No						
Kansas	Yes	Yes	No	No	By statute	Unknown	Not decided
Kentucky	Yes	Yes	No	Yes	Yes	Agreement & tracking	No
Louisiana	No						
Maine	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Maryland	Yes	Yes	No	No	No	N/A	For bulk data
Massachusetts	No						
Michigan	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Minnesota	Yes	Yes	No	Yes	Yes	Written agreement	For bulk data
Mississippi	No						
Missouri	Yes	Yes	No	No	No	N/A	No

TABLE 3
State Court Administrator Survey
Access by User, Use of Information, and Fee Information

TABLE 3 (cont.) – State Court Administrator Survey – Access by User, Use of Information, and Fee Information

STATES	Responded to Survey	Electronic Access Available by the Public	Access by Selected Users Only	Different Level of Access by Different Users	Restriction on Access Based on Use	Method of Restriction	Fees for Access
Montana	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	Yes	Yes	No	No	Yes	Subscription	Yes
Nevada	Yes	N/A	N/A	N/A	N/A	N/A	N/A
New Hampshire	Yes	N/A	N/A	N/A	N/A	N/A	N/A
New Jersey	Yes	Yes	No	Yes (Attyns)	No	N/A	Bulk data
New Mexico	No						
New York	No						
North Carolina	Yes	Yes	No	No	No	N/A	No
North Dakota	Yes	Yes	No	Yes (Attyns)	Yes	Directive	Bulk data
No. Mariana Isl.	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Ohio	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Oklahoma	No						
Oregon	Yes	Yes	No	No	No	N/A	Yes
Pennsylvania	Yes	Yes	No	Yes (Gov't)	No	N/A	Yes
Puerto Rico	No						
Rhode Island	Yes	Yes	No	No	No	N/A	Yes
South Carolina	Yes	N/A	N/A	N/A	N/A	N/A	N/A
South Dakota	Yes	Yes	No	No	No	N/A	Yes
Tennessee	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Texas	Yes	Yes	No	No	No	N/A	Yes
Utah	Yes	Yes	No	No	No	N/A	Yes
Vermont	Yes	Yes	Yes	Yes (Crim.Just)	Yes	SCA Review	Yes
Virginia	Yes	Yes	No	No	No	N/A	No
Virgin Islands	No						
Washington	Yes	Yes	No	Yes (Crim.Just)	Yes	Directive	Yes
West Virginia	No						
Wisconsin	Yes	Yes	No	Yes (DistAttny)	No	N/A	Bulk data subscription
Wyoming	Yes	N/A	N/A	N/A	N/A	N/A	N/A

TABLE 3 (cont.)
State Court Administrator Survey
Access by User, Use of Information, and Fee Information



March 2, 2005

Lisa Hobbs
Rules Attorney
Supreme Court Building
Room 104
201 W. 14th
Austin, Texas 78701

RE: Proposed Rule 14 of the Rules of Judicial Administration "Public Access to Case Records"

Dear Ms. Hobbs:

Thank you for the expeditious manner in which you emailed me the information regarding the proposed Rule 14 of the Rules of Judicial Administration. I have reviewed this information and would like to submit the following comments to the Supreme Court Advisory Committee.

I. Background.

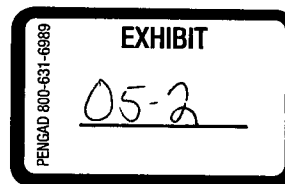
- A. Imperative Information Group, Inc. is a private investigations firm licensed by the Texas Department of Public Safety. Provision of employment-related background investigations and other due diligence investigations to businesses is our core practice area. Our clients include Fortune 500 companies, churches, schools, and a variety of other firms in Texas and across the nation.
- B. An orderly means of accessing both criminal and civil case records is crucial to the interests of Texas businesses and consumers. These records are relevant to daily business decisions affecting employment, contracting, extension of credit, and other decisions requiring due diligence.
- C. These comments refer to the draft rule dated February 25, 2005.

II. Date of birth is a key piece of information when conducting legitimate court research.

- A. Paragraph 14.4 (a) (iv) includes the date of birth on the sensitive data sheet, thereby excluding it from the case file. Paragraph 14.5 (c) (iv) prohibits the inclusion of the date of birth in case pleadings.
- B. When researching criminal records, one often finds many cases related to a single individual's name – some or all of which may not be associated with the individual on whom research is being conducted. The date of birth is the key additional identifier that associates an individual with a particular case. Removing the date of birth from criminal case records will result in:

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Fort Worth, Texas 76185
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(817) 921-5286
toll free (877) 473-2287
fax (817) 921-2108



1. Texas employers will be unable to obtain effective employment background investigations, leaving them vulnerable to negligent hiring and negligent retention suits, and
 2. Innocent Texas citizens will be associated by name-match-only with criminal records.
- C. The removal of date of birth from court records will hide real criminals from public awareness while casting undeserved suspicion on many innocent Texans. The date of birth must continue to be included on criminal case indexes and filings in order to ensure that Texas businesses and their customers are protected from criminals.

III. Rule 14 should apply to both criminal and civil cases.

- A. Paragraph 14.2 (c) of the proposed rule limits the definition of *case record* to "a record of any nature in a civil case..." Limiting this definition to civil cases seems to limit the entire rule to civil cases because paragraph 14.1 defines the scope of the rule as "public access to case records."
- B. However, other paragraphs in the proposed rule seem to address criminal case records, including paragraph 14.4 (c) (ii) which prohibits remote access to "pretrial bail or pre-sentence investigation reports" and paragraph 14.5 (a) (v) which includes on the sensitive data form "the address and phone number of a person who is a crime victim."
- C. I encourage the Court **not to limit** this important guideline to civil cases. The public deserves the same consistent methodology for accessing criminal court records as outlined in this proposed rule for civil case records.

IV. Prohibit all commercial bulk distribution of case information

- A. Paragraph 14.3 (h) allows the bulk distribution of "index, calendar, docket, or register of actions" information. Because these terms are not defined in the rule, I am assuming that case numbers, party names, causes of action, filing descriptions and related dates, and case disposition information might be included under "index, calendar, docket, or register of actions."
- B. While this information may seem innocuous, it is important to understand that these records, when sold in bulk, are routinely dumped into large databases of consumer information and access is sold to the public over the Internet.
- C. Choicepoint, one of the largest database companies, owns several companies that provide this sort of information over the Internet. Recent news accounts have revealed that access to Choicepoint's records has been fraudulently obtained, leaving millions of US consumers potential victims of identity theft.
- D. These public records databases are often marketed for use for employment or tenant screening purposes, often in direct violation of the federal Fair Credit Reporting Act, which applies to all background investigations used in the employment or credit context, regardless of whether or not a credit report is included as part of the investigation. This practice deprives consumers of their

right to dispute incorrect information upon which an employer, landlord, or lender may make an adverse decision.

- E. Because case dispositions often change over time, these records quickly become outdated and this stale data inevitably has adverse impact on consumers' ability to find employment, obtain credit, or find housing.
- F. In order to assure that court information is used in a manner that ensures that both businesses and consumers are treated fairly, all court records used in any commercial context should be sourced solely from the records of the court at the time that the information is provided. Please exclude all court records from bulk distribution for any commercial purpose.

V. All remote access users should register with the court

- A. Paragraph 14.4 (b) states that a court that "allows remote access may do so under a system that requires users to register with the court, obtain a log-in and password, and pay a reasonable fee."
- B. Many counties have made their courts' records freely open to the public over the Internet. I believe this is ill-advised in the face of the public's growing concern over identity theft and a perceived diminishing of personal privacy. The privilege of remote access should be accompanied with due diligence from the court clerk and accountability from the requester.
- C. In this matter, I strongly endorse the methods employed by Tarrant County District Clerk Tom Wilder to ensure that orderly access is available to those with legitimate needs to access case information while presenting barriers to those who would use case information in a malicious manner. Such a system would include:
 - 1. An application agreement with verifiable information about the applicant,
 - 2. A subscriber agreement that details the court's expectations of the applicant and requires the applicant to agree to work within the court's guidelines,
 - 3. Due diligence to ensure that the requester of remote access is who they claim, and
 - 4. A secure system for accessing court records and case documents.

VI. All court records should be treated the same.

- A. Paragraph 14.4 (c) excludes certain items from availability over remote access. If the court has in place a subscriber agreement requirement for all users who access court records remotely, there seems to be no need for a different level of access for remote users and in-courthouse users.

VII. Limited access to the Sensitive Data Sheet information is necessary and prudent

- A. Paragraph 14.5 (b) states that the sensitive data form "is not available for public access in any form."
- B. When conducting court records research, it is often necessary to search the case file for identifiers that may be matched against the identity information already in the possession of the researcher so that the case can be properly associated with the individual being researched or eliminated from consideration.
1. For example, if a landlord is researching a potential tenant and finds eviction records for a defendant with a similar name, the social security number listed on the rental agreement filed as an exhibit in the eviction case will determine whether the individual previously evicted is the potential tenant.
- C. The proposed rule wisely seeks to protect sensitive personal data such as social security number and drivers license number from routine public access. However, some allowance needs to be made so that a researcher can verify whether or not the personal data in a court record matches the personal information for the person being researched.
- D. The following revision to paragraph 14.5 (b) is suggested to meet this need while continuing to protect personal sensitive data:
- a) **No Access Permitted.** A sensitive data form is not available for public access in any form. However, a court clerk may verify whether the personal identifiers listed in paragraphs 14.5 (a) (i) (*social security numbers*), (iii) (*drivers license and other government-issued numbers*), and (iv) (*date of birth*) for a party to a case match the identifiers provided by a court records requestor.

Thank you for your kind consideration of these comments.

Sincerely,



Mike Coffey
President

Imperative Information Group, Inc.

SHERRY RADACK
CHIEF JUSTICE

TIM TAFT
SAM NUCHIA
TERRY JENNINGS
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June 2, 2004

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

Dear Justice Hecht:

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Sherry Radack".

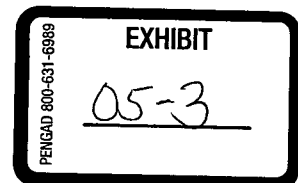
Sherry Radack
Chief Justice

Memorandum

To: SCAC Members
From: William V. Dorsaneo, III
Re: Proposed Amendments to Appellate Rule 28
Date: March 2, 2005

For the last several months the Advisory Committee and the Appellate Rules Subcommittee have been working on accelerated appeals. During this process, the committee has tentatively approved a draft of a permissive appeal provision and directed the subcommittee to incorporate the draft into a revised Appellate Rule 28. During this process the subcommittee has attempted to deal with other problems in the appellate rules concerning accelerated appeals, particularly problems caused by Texas statutes that must be read together with Rule 28. This memorandum primarily addresses other problems and concludes with a draft proposal for revision of Appellate Rule 28.

Based on my review of various statutory lists and of the statutes themselves, accelerated or expedited review is provided for in a number of different statutes. Many of the statutes, like the general interlocutory appeal statute contained in Section 51.014 of the Civil Practice and Remedies Code,



provide for an interlocutory appeal of an interlocutory order, leaving the appellate procedural details to the Appellate Rules. See C.P.R.C. § 15.003(b) (interlocutory appeal may be taken” of certain venue orders “under the procedures established for interlocutory appeals”) Fam. C. § 6.507 (“An order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal”); R.C.S. Art. 4447 cc (allowing “interlocutory appeal to an appropriate appellate court” of order requiring disclosure of environmental, health and safety audit); Nat. Res.C. § 85.253 (allowing appeal of “order granting or refusing” injunctive relief including “temporary restraining order” or “granting or overruling” “motion to dissolve temporary restraining order” “or other form of injunctive relief”); C.P.R.C. § 26.051 (allowing appeal of order denying plea to jurisdiction asserting that an agency of the state has exclusive or primary jurisdiction, as part of an appeal of a class certification order) Gov. C. § 1205.068 (making certain orders and “the judgment” appealable under “the rules of the supreme court for accelerated appeals in civil cases”).

Other statutes, which deal with accelerated appeals of final orders, specifically embrace the procedures for an accelerated appeal under the Texas Rules of Appellate Procedure with or without embellishment. See Fam. C. § 109.002 (“The procedures for an accelerated appeal under the

Texas Rules of Appellate Procedure apply to an appeal in which termination of the parent-child relationship is in issue”); Fam. C. § 263.405 (“An appeal of a final order rendered under this subchapter is governed by the rules of the Supreme Court for accelerated appeals in civil cases and the procedures provided by this section.”) At least one statute provides more vaguely that a party is “entitled to an expedited appeal,” without explaining what that means. See Fam. C. § 262.112 (allowing “expedited appeal” of order that child may not be removed from child’s home by Department of Protective and Regulatory Services).

Several statutes provide their own fast track timetables. See Health & Safety Code § Safety Code 574.070(a) (“[a]n appeal from an order requiring court ordered mental health services” must be filed “not later than the 10th day after the date on which the order is signed”); Health & Safety Code § 81.191(a) (“[a]n appeal from an order for the management of a person with a communicable disease . . .” must be filed “not later that the 10th day after the date on which the order is signed”); Elec. C. § 232.015 (acceleration of appeal in contests of general or special elections may be accelerated by the “trial or appellate court” “in a manner consistent with the procedures prescribed by Section 232.014”).

Appellate Rule 28 does not adequately deal with many of these statutes or other ones, which suggest or direct the appellate courts to give “precedence” or “priority” to certain classes of cases. For example the only final order mentioned in Appellate Rule 28 is an order in a quo warranto proceeding (see T.R.A.P. 28.2).

The last several conference calls held by the Appellate Rules Subcommittee have yielded the conclusion, if not the consensus, that Appellate Rule 28.1 should comprehensively apply to all types of accelerated, expedited or fast track appeals, without listing all of the statutes in the rule. Based on these conference calls, I proposed the following language for inclusion in Rule 28’s first sentence.

Appeals from interlocutory orders, when allowed as of right by statute, appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and all appeals required by law to be filed or perfected within less than thirty days after the date of the order or judgment being appealed are accelerated appeals.

Appeals that are merely given “priority” or “precedence” are not mentioned in the proposed revision because this kind of general statutory language seems to be precatory, at least in the view of many courts, at least when it is not accompanied by stronger statutory language. Also, these statutes do not seem to be causing any trouble, although at last some appellate judges seem troubled by them.

Another alternative would be to list some of the more troublesome statutes in the rule, such as Family Code provisions accelerating appeals from final judgments in termination cases. For example, specific reference could be made in the sentence to “appeals in a suit in which termination of the parent-child relationship is in issue as provided in Section 109.002 of the Texas Family Code and appeals of final orders as provided in subchapter E of Chapter 203 of the Texas Family Code. . .”

After defining what appeals are covered by Appellate Rule 28, I believe that a majority of the subcommittee concluded that Appellate Rule 28 should be drafted to eliminate as many of the statutory difficulties as possible. I drafted the following language to accomplish this goal.

Unless a statute expressly prohibits modification or extension of any statutory appellate deadlines, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3, regardless of any statutory deadlines.

This language can be softened by moving the language “regardless of any statutory deadlines” to a comment or eliminating it entirely, although that will make the sentence less clear to some readers. The other and opposite alternative would be something like the following.

Unless otherwise provided by statute, accelerated appeals are perfected by the filing of a notice of appeal in compliance with Rule 25, within the time allowed by Rule 26.1(b) or as extended as provided in Rule 26.3.

If this second alternative is ultimately adopted, I believe that the first sentence of proposed Appellate Rule 28.1 contained in this memorandum should be revised to expressly include termination cases as suggested above. I also believe that a detailed comment should be written to accompany the rule because this alternative merely advises parties that the statutes take a variety of approaches to acceleration.

Finally, the last sentence of Proposed 28.1(a) (or perhaps the first sentence of 28.1(b)) should state:

Filing a motion for new trial, any other posttrial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

Rule 28. Accelerated Appeals in Civil Cases

28.1 Civil Cases - Appeal As of Right

Alternative One

- (a) Perfection of Appeal.** Appeals from interlocutory orders, when allowed as of right by statute, appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, and all appeals required by law to be filed or perfected within less than thirty days after the date of the order or judgment being appealed, are accelerated appeals. Unless a statute expressly prohibits modification or extension of any statutory appellate deadlines, an accelerated appeal is perfected by filing a notice of appeal in compliance with Rule 25 within the time allowed by Rule 26.1(b) or as extended by Rule 26.3, regardless of any statutory deadlines. Filing a motion for new trial, any other posttrial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.

Alternative Two

- (a) **Perfection of Appeal.** Appeals from interlocutory orders, when allowed as of right by statute, appeals in quo warranto proceedings, appeals required by statute to be accelerated or expedited, including appeals in a suit in which termination of the parent-child relationship is in issue as provided in Section 109.002 of the Texas Family Code and appeals of final orders as provided in Section 109.002 of the Texas Family Code and appeals of final orders as provided in subchapter E of Chapter 203 of the Texas Family Code, are accelerated appeals. Unless otherwise provided by statute, accelerated appeals are perfected by the filing of a notice of appeal in compliance with Rule 25, within the time allowed by Rule 26.1(b) or as extended as provided in Rule 26.3. Filing a motion for new trial, any other posttrial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.
- (b) **Further Trial Court Proceedings.** In nonjury proceedings, the trial court need not, but may – within 30 days after the order is signed – file findings of fact and conclusions of law. In a quo warranto proceeding, the trial court may grant a motion for new trial timely filed under Texas Rule of Civil Procedure Rule 329(a)-(b) until 50 days after the judgment is signed. If not determined by signed written order within that period, the motion for new trial will be deemed overruled by operation of law on expiration of that period.
- (c) **Record and Briefs.** In lieu of the clerk’s record, the appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers. The appellate court may allow the case to be submitted without briefs. The deadlines and procedures for filing the record and briefs in an accelerated appeal are provided in Rules 35 and 38.

28.2 Civil Cases – Appeal By Permission

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

- (1) To request permission to appeal an interlocutory order pursuant to Section 51.014(d)-(f) of the Civil Practice and Remedies Code, a

party to the trial court proceeding must file a petition for permission to appeal with the clerk of the appellate court that has appellate jurisdiction over the action.

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

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

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

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

(1) The petition must:

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

(B) list the names of all parties to the trial court proceeding and the names, addresses and telefax numbers of all trial and appellate counsel;

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

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

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

(F) state concisely the issues or points presented, the facts necessary to understand the issues or points presented, the reasons why the

order complained of involves a controlling question of law as to which there is substantial ground for difference of opinion, why an immediate appeal may materially advance the ultimate termination of the litigation, and the relief sought.

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

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

(c) Form of papers; number of copies:

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

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

(e) Grant of petition; prosecution of appeal

(1) Within 10 days after the signing of the appellate court's

order granting permission to appeal, in order to perfect an appeal under these rules, any party to the trial court proceeding may file a notice of accelerated appeal with the district clerk and the clerk of the appellate court in conformity with Rule 25.1 together with a docketing statement as provided in Rule 32. The provisions of Rule 26.3 apply to such a notice.

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

[Alternative (e)]

(e) Grant of petition; prosecution of appeal

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

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

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

(C) pay all required fees

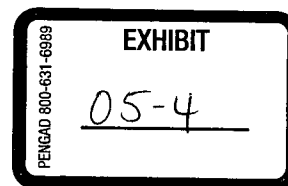
(2) After perfection of the appeal, the appeal shall be prosecuted in the same manner as my other accelerated appeal.

**COORDINATING A CONUNDRUM: TEXAS COURTS OF APPEALS' STRUGGLE
WITH DECIDING WHICH PRECEDENT TO APPLY WHEN CASES ARE
TRANSFERRED TO THEM UNDER TEXAS SUPREME COURT AUTHORITY**

I. Introduction

The question of whether the courts of appeals should decide cases transferred to them under the transfer power granted to the Supreme Court by Tex. Gov't Code § 73.001 by applying their own precedent or that of the transferring court admits of no clear answer. Certainly no one can quarrel with the principle that state laws should apply uniformly to parties in different territorial districts. Unfortunately, under current Texas practice, conflict is precisely the result of having a system of coordinate courts of appeals that enunciate interpretations of state laws for their own territorial jurisdictions absent a requirement of mandatory acceptance of the precedent of sister courts. Tex. Gov't Code § 22.001(a)(2) gives the Supreme Court jurisdiction to hear cases concerning conflicts of law between the courts of appeals, but the courts of appeals themselves have been engaged in the struggle to determine which precedent to apply when cases are transferred to them. The question then becomes, who decides? Should the courts of appeals themselves determine which precedent to apply, thereby opening the door to conflicting outcomes within territorial districts, or should the question be reserved for § 22.001(a)(2) cases heard by the Supreme Court?

Part II is a brief look at the historical development of the Texas courts of appeals and the power granted to the Texas Supreme Court to transfer cases between the courts of appeals, as well as a recent resolution urging the Texas Supreme Court to adopt a rule or rules of appellate procedure to deal with the issue of conflicting precedent in appellate case transfers. Part III examines two recent decisions, one by the Tenth District and one by the Fourth District, which



highlight the confusion and difficulty that the courts of appeals are struggling with in the area of precedential conflicts between the courts. Part IV looks at two states' attempt at resolving the issues related to transfer of appeals between courts of appeals; New York and California have adopted different rules for the transfer of cases on appeal, and each gives insight into how a rule of appellate procedure could be structured in Texas; Part V analyzes the problem by asking whether resolution of conflicts between the courts of appeals is more correctly left to those courts or to the Supreme Court under its jurisdiction to hear conflicts of law cases arising between the courts of appeals.

II. Historical Development of the Texas Courts of Appeals

Prior to 1876, appellate jurisdiction in Texas was exclusively in the Texas Supreme Court. The Texas Constitution of 1876 created the appellate courts, whose jurisdiction included appellate jurisdiction in all criminal cases from the district courts as well as all appeals, civil and criminal, from the county courts.¹ The Texas Supreme Court retained jurisdiction in all civil appeals from the district courts.² By 1890 civil appeals from the district courts had increased to the point that the Supreme Court could not keep-up, and in September, 1891, the Texas Constitution was amended to create the courts of civil appeals to hear all civil appeals from district and county courts.³ Criminal appeal jurisdiction was vested by this same amendment in

¹Townes, TEXAS PLEADINGS 2d, 101-02 (1913) (hereinafter *Townes*).

²*Id.*

³*Id.* at 103-04. Townes indicates it was “a physical impossibility for the Supreme Court to keep-up with the vast and ever increasing number of appeals in civil cases.” *Id.*

the courts of criminal appeals.⁴

A. JURISDICTION

The Amendment of September 22, 1891 gave the courts of civil appeals jurisdiction “coextensive with the limits of their respective districts, which shall extend to all civil cases of which the district or county courts have original or appellate jurisdiction.”⁵ In addition, the courts of civil appeals retained “such other jurisdiction, original and appellate, as may be prescribed by law.”⁶ Pursuant to this grant of power, the 24th legislature passed “An act to give jurisdiction to the several Courts of Civil Appeals over cases transferred from one of such courts to another under the direction of the Supreme Court, and providing for the transfer of such cases.”⁷ This act made it the duty of the Supreme Court to equalize the dockets of the various courts of civil appeals once a year by directing transfers from courts with heavier docket loads to those with lighter loads.⁸ The courts of civil appeals to which cases were transferred were granted jurisdiction of the transferred cases “without regard to the districts in which such cases were originally tried and returnable on appeal.”⁹

Justice Charles W. Barrow, in an article from 1978, discussed the procedures as they then

⁴*Id.*

⁵*Bond v. Carter*, 96 Tex. 359 (1903) (citing Article 5, section 6 of the Texas Constitution as amended September 22, 1891).

⁶*Id.*

⁷Act of Apr. 19, 1895, 24th Leg., R.S., ch. 53, 1, 1895 Tex. Gen. Laws 79.

⁸*Id.*

⁹*Id.*

stood for inter-court transfers.¹⁰ Repealed in 1985, Texas Revised Civil Statute article 1738 gave the Supreme Court more latitude in transferring cases between courts of civil appeals.¹¹ The Court now had authority to transfer cases “at any time” when the Supreme Court determined that good cause existed for such transfer.¹² Article 1738 continued to grant the transferee court jurisdiction over the cases regardless of the district in which they were originally tried.¹³ However, oral argument was to be heard in the district from which the case was transferred.¹⁴ Finally, opinions issued in transferred cases were to be “delivered, entered and rendered at the place where the court to which the cases are transferred regularly sits.”¹⁵ Thus, it appears plausible that the opinion would become precedent for the transferee court, not necessarily the transferor court.

B. OVERLAPPING DISTRICTS

In 1927, the legislature moved Hunt County from the Fifth District in Dallas to the Sixth District in Texarkana.¹⁶ Then, in 1934, the legislature moved it back to the Fifth District,

¹⁰Barrow, Charles W., *Transfer of Cases Between Courts of Civil Appeals by the Supreme Court of Texas*, 41 Tex. B.J. 335 (1978) (hereinafter *Barrow*).

¹¹Tex. Rev. Civ. Stat. art. 1738 (1963).

¹²*Id.*

¹³*Barrow, supra* note 10 at 335.

¹⁴*Id.*

¹⁵*Id.*

¹⁶Worthen, James T., *The Organizational & Structural Development of Intermediate Appellate Courts in Texas, 1892-2003*, 46 S. Tex. L. Rev. 33, 64 (2004) (hereinafter *Worthen*).

thereby creating the first county within overlapping appellate court jurisdiction.¹⁷ When the Twelfth Court of Appeals was created in Tyler, eight counties fell within its jurisdiction and the jurisdiction of another court of appeals.¹⁸ Because of the overlaps, civil appellants in these eight counties have the opportunity to elect in which court of appeals district the appeal will be heard.¹⁹ Thus, in *Miles v. Ford Motor Company*²⁰ the Supreme Court held that, absent inequitable conduct estopping a party from asserting prior active jurisdiction or a lack of intent to prosecute, the first party to perfect an appeal controls venue selection.²¹ The Court in *Miles* reiterated a concern regarding overlapping appellate district jurisdiction when it said: “[T]he problems created by overlapping districts are manifest. Both the bench and bar in counties served by multiple courts are subjected to uncertainty from conflicting legal authority.”²²

C. RECENT PROPOSED LEGISLATION

The Texas State Senate has recently introduced a bill, SCR No. 7, which would cause the legislature to urge the Supreme Court to adopt a new rule or rules designed to resolve conflicting precedent in transferred and overlapping jurisdiction cases.²³ The resolution, which has been

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰*Miles v. Ford Motor Co.*, 914 S.W.2d 135 (Tex. 1995).

²¹*Id.* at 138-39 (holding that “the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts” and citing to Tex. Gov’t Code §73.001, discussed *infra*).

²²*Id.* at 139.

²³79R7358 TLE-F, S.C.R. No. 7 by Duncan.

filed with the Secretary of State by the Senate, asks the Supreme Court “to adopt rules providing for the random assignment of cases” for cases arising in a county located within two or more districts.²⁴ In addition, and more importantly, the resolution asks the Supreme Court to adopt rules governing the precedent to be applied when an appeal is transferred pursuant to the Supreme Court’s constitutional grant of authority to transfer cases.²⁵ The resolution goes on to indicate that the rule should be specific to situations in which there is a conflict of precedent between the transferring and transferee courts.²⁶

III. Current Appellate Court Jurisdiction and Transfer Concerns

The overlapping of Texas courts of appeals continues to be an issue in Texas.²⁷ The Texas legislature has made some improvements in this regard, the latest in 2003 when the legislature restored Brazos county to the exclusive jurisdiction of the Tenth District.²⁸ However, eliminating the overlapping appellate court jurisdiction will have no effect on cases transferred pursuant to the Supreme Court’s transfer authority.²⁹ Indeed, as the following cases show, the

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*

²⁷According to a recent Court of Appeals map there are twenty-two counties lying within two or more Courts of Appeals’ jurisdictions.

²⁸*Worthen, supra* note 16 at 65.

²⁹Currently the Supreme Court’s authority to transfer appeals from one district to another is governed by Tex. Gov’t Code §73.001, which states that the Court may order transfer of cases “at any time” the Court finds “good cause” to do so. *See* Tex. Gov’t Code § 73.001. The

concerns of the *Miles* court that “[b]oth the bench and bar . . . are subjected to uncertainty from conflicting legal authority” is as active as ever.³⁰

A. TENTH CIRCUIT – WACO

In *Jaubert v. Texas*³¹ Judge Vance of the Tenth Circuit issued this strong statement of position on the applicable law question: “There are some who argue that we should apply the law of the court from which the case was transferred to cases transferred out of one court of appeals and into another. We disagree.”³² In this criminal case Jaubert failed to preserve his ineffectiveness of counsel claim at his trial.³³ The Fort Worth Court of Appeals would have heard this claim for the first time on appeal, but the case was transferred pursuant to Tex. Gov’t

Supreme Court has previously approved an appellate redistricting plan that would eliminate all county overlaps, consolidate the territorial jurisdiction of some districts, and substantially increase the number of appellate court judges in the busiest districts. By evening-out the disparity in workloads between the courts of appeals, the Supreme Court hopes to the need to transfer cases between the courts of appeals will be eliminated. Notably, the redistricting plan promulgated by the Supreme Court: consolidates the First and Fourteenth Districts into the First; creates a new Fourteenth District in the Rio Grande Valley; increases justices in Houston, Dallas and Beaumont districts; and expands the Eleventh District from twenty-three to fifty-five counties. *See*, email from Osler McCarthy to Lisa Hobbs, “Texas Supreme Court advisory: Appellate redistricting,” February 28, 2005 (originally dated December 17, 2002).

³⁰*Miles*, 914 S.W.2d at 139.

³¹*Jaubert v. Texas*, 65 S.W.3d 73 (10th Dist.–Waco 2000).

³²*Id.* at 75.

Code § 73.001 to the Waco Court of Appeals.³⁴ In his concurrence, Judge Gray more subtly examined the transfer issue under the light of a choice of law analysis.³⁵ Like other judges and Justices faced with the question of which district's law to apply, he asked the question: "Should we apply the law as we believe it should be across the State of Texas or should we apply the law in the manner we believe [the transferring court] would apply it?"³⁶ Because the Waco court determined in a previous case that state law as interpreted by the Waco court would apply in transfer cases, Judge Gray found himself bound by *stare decisis* to concur in the judgment that Jaubert's claim was not preserved and therefore non-reviewable.³⁷

B. FOURTH CIRCUIT – SAN ANTONIO

In *American National Insurance Co. v. International Business Machines*,³⁸ the Fourth Circuit Court of Appeals in San Antonio held that fraudulent inducement to contract is a viable claim separate from a breach of contract claim.³⁹ This determination conflicted with the precedent in the First District, where the appeal had originally been assigned by the 56th Judicial District Court of Galveston County.⁴⁰ Under First and Fourteenth District precedent no claim for

³³*Id.*

³⁴*Id.*

³⁵*Id.* at 76.

³⁶*Id.* at 77.

³⁷*Id.*

³⁸*Am. Nat. Ins. Co. v. IBM*, 933 S.W.2d 685 (4th Dist.–San Antonio 1996).

³⁹*Id.* at 687.

⁴⁰*Id.* at 689-90.

fraudulent inducement could accompany a benefit-of-the-bargain damage action sounding in contract.⁴¹ Thus, the court's determination to apply its own precedent rather than either the First or Fourteenth District's led to a conflict of laws issue.⁴² Indeed, the majority's opinion admitted that its holding was in direct conflict with the First and Fourteenth District precedent, but stated that it believed that its role was to interpret Texas state law, not the law of the First or Fourteenth District.⁴³ The appropriate remedy in such circumstances was appeal to the Texas Supreme Court in accordance with Tex. Gov't Code § 22.001(a)(2).⁴⁴

In her dissent, Judge Duncan addressed the conflict of laws inherent in coordinate court transfer cases. First she recognized that no court has enunciated choice of law rules for resolving conflicts between the coordinate appellate courts.⁴⁵ Secondly she pointed out that all too often transferee courts are silent as to the transfer status of the case and that there is a conflict of applicable law between the transferee court and the transferring court.⁴⁶ In enunciating her preferred approach that the courts of appeals adopt a choice of law rule requiring transferee courts to apply the law of the transferring court, she looked to traditional conflict of law analysis.⁴⁷ Her approach purports to take account of the needs of the intrastate transfer system,

⁴¹*Id.* at 690.

⁴²*Id.* As Judge Duncan's dissent pointed out, the transcript was filed and briefing made in the First District before transfer to the Fourth District. *Id.*

⁴³*Id.* at 688.

⁴⁴*Id.*

⁴⁵*Id.* at 690.

⁴⁶*Id.* at note 3.

⁴⁷*Id.* at 692.

as well as the policies and interests of the transferring and receiving courts.⁴⁸ Her analysis is a useful framework for considering whether a rule of appellate procedure should require a transferee court to apply the precedent and state law interpretation of the transferring court.

1. The Needs of the Intrastate Transfer System

Equalization of appellate court dockets has been the primary concern underlying the Supreme Court's power to transfer cases between the courts of appeals.⁴⁹ According to Judge Duncan, efficiency, the "laudable goal" of equalization, is properly effected when the transfer system is convenient for the courts, pragmatically workable, and fair to litigants.⁵⁰

a. Convenience

A 1927 amendment required that transferred cases be heard in the place where the transferring court usually sits.⁵¹ This requirement has carried-over for the current courts of appeals by Tex. Gov't Code § 73.003.⁵² Thus, argues Judge Duncan, transferee courts are akin to a panel of visiting judges, a role that would require them to apply the law of the transferring

⁴⁸*Id.* at 692-94.

⁴⁹*See Townes, supra* note 1 at 103-04 and Act of Apr. 19, 1895, *supra* note 7.

⁵⁰*Am. Nat. Ins. Co.*, 933 S.W.2d at 692-94.

⁵¹*Id.* at 692 (citing Act of March 10, 1927, 40th Leg., R.S., ch. 76 §§ 1-2, 1927 Tex. Gen. Laws 115, 115-16).

⁵²Tex. Gov't Code § 73.003(b), (c), requiring that transfer cases be heard in the place where the transferring court usually sits unless the parties agree otherwise or the court is closer than 35 miles from the transferring court.

court.⁵³ Notwithstanding that, the convenience factor seems to Judge Duncan to be neutral in conflicts analysis, because the Fourth Circuit could just as easily apply the First or Fourteenth Districts' law as its own.⁵⁴

b. Workability

The issue of workability is essentially law-of-the-case analysis.⁵⁵ Judge Duncan argues that a rule allowing a transferee court to apply its own law is unworkable because remanding a case back to the trial court would effectively require the trial court to apply the law of the transferee court.⁵⁶ Thus, in this case, the trial court applied the law as enunciated by the Houston courts of appeals, holding that American National did not have a cause of action in fraud, and the parties briefed the appellate court on authority of the First and Fourteenth Districts. However, on remand, the trial court will be bound to recognize the fraud action.⁵⁷ Finally, statistically the case on further appeal would be heard by either the First or Fourteenth District Court of Appeal, which likewise would be bound by the Fourth District's precedent.⁵⁸ Thus, in Judge Duncan's opinion, because the coordinate courts can only set aside, annul or vacate another court's order under a clearly erroneous standard, to apply the transferee court's interpretation of state law to the transferring district is unworkable.⁵⁹

⁵³ *Am. Nat. Ins. Co.*, 933 S.W.2d at 692.

⁵⁴ *Id.*

⁵⁵ *Id.* at 693.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 694.

c. Fairness

The issue of fairness is simply and succinctly put by Judge Duncan: “[H]ow can it be fair when IBM would win in the transferring court, while in the receiving court it loses - when the sole purpose of the transfer is docket equalization, not the promotion of one court of appeals’ view of the substantive law?”⁶⁰ By engendering such an unfair result, Judge Duncan worries that the transfer system will not achieve general acceptance, and will violate fundamental principles of justice.⁶¹

2. Relevant Policies and Interests of the Courts

At the time this opinion issued, the Houston Courts of Appeals had “uniformly and consistent[ly]” held that the “contort” claim was barred.⁶² This uniformity and consistency underscores the interests and policy goals which those districts sought to further.⁶³ In contrast, the Fourth District, according to Judge Duncan, had no interest whatsoever in the outcome.⁶⁴ The transaction under which this case arose did not occur in the Fourth District’s territorial jurisdiction, the trial did not take place in the district courts of the Fourth District, and in all likelihood the Fourth District Court of Appeals would not hear any further appeal.⁶⁵ In addition, The Fourth Circuit had recently enunciated its own position on the “contort” claim and had no further need to define the interests and policies it sought to further within its territorial

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

jurisdiction.⁶⁶ Thus, the balance of interests between transferee and transferring court in this case weighed heavily in favor of applying the transferring court's precedent.⁶⁷

IV. Other States's Solutions to the Problem of Appeals Transfers

Two states that have dealt with the issue of appellate case transfers are notable. California and New York have addressed and resolved the issue in different ways, both of which are instructive for our purposes.

A. NEW YORK

New York Civil Practice Law and Rule § 5711 provides that appeals may be transferred from one department to another "in furtherance of justice."⁶⁸ The Court of Appeal of New York, the state's highest court, has held in *Doyle v. Amster*⁶⁹ that cases transferred between one of the state's four appellate departments should be decided on the law of the transferring court.⁷⁰ In *Doyle* an appeal was transferred from the Second Department of the Appellate Division to the

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸New York Civ. Prac. L. & R. § 5711 (2004). The Advisory Committee Notes to §5711 indicate that "Furtherance of justice" includes: "(1) lack of a quorum of four justices; (2) Lack of concurrence of three justices; (3) Inability to dispose of business within a reasonable time; (4) Where the order was granted or the case tried before a judge who is now one of the justices of the Appellate Division." *Id.*

⁶⁹*Doyle v. Amster*, 594 N.E.2d 911 (NY 1992).

⁷⁰*Id.* at 913.

Third Department pursuant to New York Constitution, article VI, §4.⁷¹ The case involved a challenge to the Clarkstown Zoning Board’s determination that Doyle be denied his application to subdivide a parcel of land located in New City.⁷² Although the law in the Second and Third Divisions was “essentially the same,” the Court found that if the law had been different, “the view of the originating intermediate appellate court governs.”⁷³ The conflict of law between the Divisions would persist, said the Court, “until we finally settle the issue.”⁷⁴

B. CALIFORNIA

California also allows for inter-court transfers of cases on appeal. California Rules of Court 47.1 vests authority in the Supreme Court to transfer “causes” between the state’s courts of appeals.⁷⁵ The Advisory Committee Comment to Rule 47.1 states that “only the Supreme Court may transfer causes between Courts of Appeal.”⁷⁶ However, Rule 62 gives authority to the courts of appeal to order cases transferred to it “if the appellate division certified . . . that transfer is necessary to secure uniformity of decision or to settle an important question of law.”⁷⁷ Thus, in *Snukal v. Flightways Manufacturing, Inc.*,⁷⁸ the California Supreme Court reaffirmed that the courts of appeals have “uncontrolled discretion” to transfer appeals to its jurisdictions under rule

⁷¹*Id.*

⁷²*Id.* at 912.

⁷³*Id.* at 913.

⁷⁴*Id.*

⁷⁵Cal R. Court R 47.1.

⁷⁶*Id.*

⁷⁷Cal. R. Court R 62.

⁷⁸*Snukal v. Flightways Manufacturing, Inc.*, 3 P.3d 286 (Cal. 2000).

62.⁷⁹ That discretion, however, does not include the discretion to “select and review only an issue or issues not dispositive of the appeal.”⁸⁰ Instead, according to the Court, the court of appeal must “decide the issues necessary to resolution of the appeal and thereafter to transmit the remittitur to the municipal court (or, in the instance of a limited civil case tried in a unified superior court, to transmit the remittitur to the superior court).”⁸¹

V. Analysis

We take as a first principle that the law should not be different in different places within the state. This is clearly the rationale behind the legislative grant of power in the Supreme Court to hear cases where there is a conflict between the courts of appeals on issue of state law.⁸² In this fundamental respect, the courts of appeals are interpreting the law of the state, not merely the law as it exists in their respective districts. 22.001(a)(2) would be unnecessary if the coordinate courts were interpreting and applying state law only as it applies in their own

⁷⁹*Id.* at 293.

⁸⁰*Id.*

⁸¹*Id.* at 291.

⁸²*See* Tex. Gov’t Code § 22.001(a)(2) (a case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case), (6) (any other case in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute).

districts. If state law is allowed to mean different things in different territorial districts, conflicts would pose no significant issue of state jurisprudence.

In another sense, however, the statutory grant of jurisdiction in the Supreme Court to decide on conflicts arising between the courts of appeals militates against the courts themselves deciding conflicts of law. It has been argued that until the Supreme Court inveighs on which court of appeals has correctly interpreted state law, the coordinate courts ought to respect the interpretation of the court from which a case has been transferred. This is precisely Judge Duncan's approach. When a transferring court has already issued its interpretation of state law, with its concomitant interests and policy objectives, unfair surprise and disparate results may follow from a transferee court applying its own precedent. However, Judge Duncan's approach does not work when the transferring court has not decided the state law issue. In that circumstance, it would be appropriate for a coordinate transferee court to apply its own standing precedent. Indeed, it is difficult to see how such a court could do otherwise unless it simply guessed at what the transferring court would decide under the circumstances.

VI. Conclusion

Perhaps the issue ought to be framed as a choice between principle and pragmatism. The courts of appeals see themselves as interpreters of state law and upholders of the postulate that state law does not mean different things in different places. By interpreting and applying state law consistent with their own precedent, transferee courts are faithful to the first principle when they hold fast to their own precedent. In doing so, the transferee court maintains integrity within itself. Pragmatically this steadfastness leads to disparate results that cause confusion and

perhaps unfair disappointment for litigants and their attorneys. Having tried a case in one district, briefed their appeal under that district's precedent, they must steel themselves for the possibility that their appeal will be transferred, and that the transferee court interprets state law in such a way as to turn their winning arguments into losing propositions. A rule that mandates that the courts of appeals apply the precedent of the transferring court would have the benefit of certainty for litigants and the judiciary, though it must acknowledge that, until the Supreme Court decides the issue, state law is indeed different in different territorial districts.

By: Duncan

S.C.R. No. 7

CONCURRENT RESOLUTION

1 WHEREAS, The Supreme Court of Texas has rulemaking authority
2 in matters of practice and procedure in civil actions; and

3 WHEREAS, The Court of Criminal Appeals of Texas has
4 rulemaking authority in matters of post-trial, appellate, and
5 review procedure in criminal cases; and

6 WHEREAS, Certain counties in this state lie within the
7 jurisdiction of more than one court of appeals district and
8 appellate proceedings involving cases filed in courts within such
9 counties may be filed in or assigned to one of a number of courts of
10 appeals; and

11 WHEREAS, Cases pending in a court of appeals are on occasion
12 transferred to another court of appeals for docket equalization;
13 now, therefore, be it

14 RESOLVED, That the 79th Legislature of the State of Texas
15 hereby urge the Supreme Court of Texas and the Court of Criminal
16 Appeals of Texas to adopt rules providing for the random assignment
17 of cases pending in or appealed from counties lying within the
18 jurisdiction of more than one court of appeals district to a court
19 of appeals for appellate proceedings; and, be it further

20 RESOLVED, That the 79th Legislature of the State of Texas
21 hereby urge the Supreme Court of Texas to adopt rules for
22 determining which court of appeals' precedent will be applied in
23 cases that are transferred from one court of appeals to another
24 court of appeals if there is a conflict between the precedent of the

S.C.R. No. 7

1 two courts of appeals; and, be it further

2 RESOLVED, That the secretary of state forward an official
3 copy of this resolution to the chief justice of the Supreme Court of
4 Texas and to the presiding judge of the Court of Criminal Appeals of
5 Texas.

A BILL TO BE ENTITLED

AN ACT

relating to the assignment of cases in overlapping courts of appeals districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2011 to read as follows:

Sec. 22.2011. ASSIGNMENT OF CASES IN OVERLAPPING COURTS OF APPEALS DISTRICT.

(a) Proceedings in courts of appeals relating to cases pending in a county lying within more than one court of appeals district shall be brought as provided by this section.

(b) Assignment to one of the courts of appeals within whose districts the case is pending shall be made (1) before notice of appeal is filed in the case, if requested by the trial court judge or any party to the case; (2) before an original proceeding arising from the case is pursued; or (3) upon filing of a notice of appeal in the case. Assignment shall be made by the trial court clerk in a public place by random method.

(c) Unless the case is transferred to another court of appeals under another statute or by order of the supreme court, all proceedings in the following matters shall be maintained in the court of appeals to which assignment has been made pursuant to subsection (b): (1) the assigned case; (2) an original proceeding arising from the case; and (3) any other case or original proceeding from a case filed in a county within the district of the assigned court of appeals and which arise from the same facts or occurrences as the assigned case.

(d) A court of appeals other than the court in which a matter may be maintained pursuant to subsection (c) may upon its own motion, and shall, upon the written motion of a party to the matter, transfer the matter to the proper court of appeals as provided by subsection (c). A written motion seeking transfer of the matter shall be deemed waived

if not filed prior to beginning of oral arguments or prior to the date of submission if the matter is submitted on briefs.

(e) The trial court clerk shall, at the time of assignment, give written notice to the assigned appellate court of any assignment made pursuant to this section.

SECTION 2. This Act applies to cases in which a valid notice of appeal has not been filed before the effective date of this Act.

SECTION 3. Sections 22.202 (h) and 22.207(c) are repealed effective September 1, 2005.

SECTION 4. This Act takes effect September 1, 2005.

Lisa Hobbs

From: Hatchell, Mike [mahatchell@lockeliddell.com]
Sent: Thursday, March 03, 2005 11:47 AM
To: Nathan Hecht
Cc: Lisa Hobbs (E-mail)
Subject: RE: Draft rule - Consolidation of Cross Appeals

Justice Hecht: I was wrong. Bill Dorsaneo does not have a draft of a rule addressing "Whose precedent?" He and I have talked about the matter, and he says he's got a rule formulated in his brain.

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My reaction is that the approach in the draft legislation is a lot of bureaucracy for a small problem. Once randomness is introduced into the system, gamesmanship is largely going to cease and we will deal, I believe, with only those cases involving true cross appeals.

This legislation, as I understand it, takes away the right of an appealing party to designate a court of appeals in the relevant counties even when there is no cross appeal, and it requires machinery in every district and county clerk's office in those counties subject to concurrent jurisdiction. I thought about this approach, because it mirrors what happens in some (not all) counties subject to the 1st and 14th. But, that is a different problem because assignment must be made for every case appealed to a Houston Court.

The current "problem" -- if you can call it that -- with cross appeals is (no disrespect intended) with the Miles decision itself. Prior to that time, the resolution of these issues -- which was once in a "blue moon", to quote a noted Texas jurist -- was by phone calls from the Clerks and a letter from the Chief Justice. No one knew how Calvert, et al, made the decision, but there was no hue and cry, either. And, no jockeying for position. Miles essentially gave the the inmates the keys to the asylum and planted a lot of ideas no one had before. My prediction is that, when randomness is introduced again, these incidents are going to return to the numbers we saw in the 1960's, 70's, and early 80's, boosted a bit perhaps because of the modern complexity of appeals with multiple claims and cross-claims.

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I'll be happy to continue working on this as the Court or the SCAC may wish. I already have a line of communication open with C.J. Worthen and Morris.

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From: Nathan Hecht [mailto:nathan.hecht@courts.state.tx.us]
Sent: Wednesday, March 02, 2005 4:51 PM
To: Hatchell, Mike
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From: Nathan Hecht
Sent: Wednesday, March 02, 2005 1:53 PM
To: Lisa Hobbs; 'mahatchell111@lockeliddell.com'

Cc: Chip Babcock (cbabcock@jw.com)
Subject: RE: Draft rule - Consolidation of Cross Appeals

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What do you think?

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Lisa Hobbs

From: Nathan Hecht
Sent: Thursday, March 03, 2005 12:26 PM
To: 'Hatchell, Mike'
Cc: Lisa Hobbs
Subject: RE: Draft rule - Consolidation of Cross Appeals

Mike: I agree that the draft legislation was cumbersome, hence my advice to the Chiefs that they go the legislative resolution route instead. The resolution is only in case anyone might try to argue that assignment of cases in overlapping districts is beyond this Court's or the CCA's rulemaking power. I don't think it is myself, but a resolution provides marginally more assurance.

I did not visit with the Chiefs at length about their draft legislation, but at the time they abandoned it, my sense was that they were not wed to it or any other particular approach but simply wanted a workable, random procedure. They are now looking to the Advisory Committee to come up with the best plan. I indicated to them that our Court would approve anything they and the Committee were happy with within reason. PJ Keller was there, and my sense was that her court would do the same.

So, yes, I hope you'll continue to work on a rule to satisfy the Chiefs. I suspect that only the Chiefs who will be affected have much interest. I promised them the Committee would hurry, but I told them it might be May before we could get to it, given all that would be on the March agenda.

NLH

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111 Congress Avenue
Suite 1100
Austin, TX 78701-4043
Tel: +1.512.542.5300
Fax: +1.512.542.5399

www.bearingpoint.com

February 7, 2005

Mr. Richard R. Orsinger
Chair, Subcommittee on Information Technology
Supreme Court Advisory Committee
P.O. Box 12248
Austin, Texas 78711-2248

Re: Texas Rules of Civil Procedure: Electronic Filing

Dear Mr. Orsinger:

During the past two years, the Texas judiciary has successfully tested and implemented statewide electronic court filing ("e-filing") via the state's electronic government portal, TexasOnline. As your subcommittee reviews the proposed changes to the Texas Rules of Civil Procedure (TRCP) to incorporate e-filing, I respectfully offer for your consideration some factors supporting the authority of judges to order electronic filing and electronic service.

To meet the needs of the Texas judiciary and the standards of the Supreme Court, BearingPoint has invested heavily to develop and maintain the Texas e-filing network. The Governor-appointed TexasOnline Authority, which oversees our business operations, closely monitors the e-filing system's return on investment. To date the adoption rate by filers has been less than desired. A key factor in the low adoption rate in Texas has been the largely permissive nature of the standard local rules. Increasing the authority of judges to order electronic filing and electronic service will improve adoption and help to sustain the Texas e-filing system.

Electronic filing began in Texas in the mid-1990s when Judge James Mehaffy crafted the first local rules for e-filing in Jefferson County District Courts. Montgomery County District Courts quickly adopted the same rules. Those two pioneer counties continue to operate under rules which provide that judges may "...by written order, select and designate those cases which shall be assigned to the electronic filing system..." Although in the first few years, some attorneys e-filing in those courts complained about being required to subscribe to the court's specified service provider, that issue has been resolved by the Judicial Committee on Information Technology. Their TexasOnline solution allows attorneys to select any certified service provider in an open, competitive market and to then e-file in any participating court across the state.

Since the Supreme Court approved the standard local rules for the TexasOnline pilot project in 2002, many factors have changed, mitigating some of the early concerns.



- TexasOnline e-filing has proved to be reliable and secure, successfully processing all e-filing and e-service transactions.
- Some district courts have ordered electronic service in selected multi-party cases, with no reported complaints or adverse effects.
- Many federal district courts and bankruptcy courts now require electronic filing in all cases.
- The American Bar Association has approved court e-filing standards, which provide that *“Judges should have the authority to require participation in the electronic filing system in appropriate cases until such participation becomes mandatory for all cases.”*
- Citizens increasingly enjoy the convenience and security offered by online services. Texans use TexasOnline services around the clock to renew their licenses, pay their taxes and fines, and register their vehicles. Others shop online and routinely pay their bills by e-check.

Our goal is to provide efficient and standard electronic court filing services, as envisioned by the legislature and the Supreme Court, to meet the needs of the Texas judiciary and Texans everywhere. To deliver on that challenge, we need the judiciary’s support to remove any barriers that limit adoption rates and thereby render the business operations unsustainable. We therefore ask that your subcommittee support giving judges full authority in the Texas Rules of Civil Procedure to order electronic filing and electronic service.

Thank you very much for your consideration of this request. Please let me know if you have any questions or if your subcommittee would like additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Miglicco".

Gary Miglicco
Vice President
BearingPoint, Inc.

cc: Ms. Lisa Hobbs, Rules Attorney, Supreme Court of Texas
Mr. Peter Vogel, Chair, Judicial Committee on Information Technology

Lisa Hobbs

From: Richard Orsinger [Richard@momnd.com]
Sent: Saturday, February 19, 2005 8:49 AM
To: Lisa Hobbs
Subject: SCAC--electronic filing rules

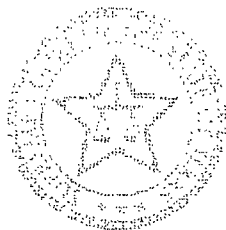
Lisa: I wasn't thinking so. We have already started on revisions with the entire committee, and are still in process with that. I think we're past the need for subcommittee approval of the package.

However, if we agreed in the last full committee meeting to revise some sentences or paragraphs, I think we should do that at the subcommittee level. Do your notes reflect that we have instructions to re-write any portion of the rules, or did we just suspend our discussion in mid-stream?

Richard

From: Lisa Hobbs [mailto:Lisa.Hobbs@courts.state.tx.us]
Sent: Thursday, February 17, 2005 7:36 PM
To: Richard Orsinger
Subject: Next Step

Do you anticipate that the subcommittee will present a subcommittee-approved working draft of the proposed rules relating to e-filing?



JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

Peter Vogel
Chair

June 28, 2004

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

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

Dear Chief Justice Phillips:

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

These proposed changes to incorporate electronic court filing

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

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to be "PV", written over a faint circular stamp.

Peter Vogel
Chair, Judicial Committee on Information Technology

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

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

June 2004

Rule 4. Computation of Time

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

Rule 11. Agreements To Be in Writing

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

Rule 19a. Judge's Orders

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

Rule 21. Filing and Serving Pleadings and Motions

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

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

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

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

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

Rule 21a. Methods of Service

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

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

Rule 45. Definition and System

Pleadings in the district and county courts shall

- (a) be by petition and answer;
- (b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;
- (c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense;
- (d) be ~~in writing, on paper~~ or be electronically filed with the clerk by transmitting them through TexasOnline.

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

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

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

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

Rule 57. Signing of Pleadings

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

Rule 74. Filing With the Court Defined

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

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

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

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

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

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

Rule 74b. Documents That May Not be Electronically Filed

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

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

Rule 93. Certain Pleas to be Verified

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

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.
2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.
3. That there is another suit pending in this State between the same parties involving the same claim.
4. That there is a defect of parties, plaintiff or defendant.
5. A denial of partnership as alleged in any pleading as to any party to the suit.

6. That any party alleged in any pleading to be a corporation is not incorporated as alleged.
7. Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it states that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.
8. A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.
9. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.
10. A denial of an account which is the foundation of the plaintiff's action, and supported by affidavit.
11. That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.
12. That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.
13. In the trial of any case appealed to the court from the Industrial Accident Board the following, if pleaded, shall be presumed to be true as pleaded and have been done and filed in legal time and manner unless denied by verified pleadings:
 - (a) Notice of injury.
 - (b) Claim for compensation.
 - (c) Award of the Board.
 - (d) Notice of intention not to abide by the award of the Board.
 - (e) Filing of suit to set aside the award.

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

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

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

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

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

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

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

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

Rule 167. Orders Regarding Electronic Filing

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

Judge Fred Edwards
9th Judicial District • Montgomery & Waller Counties

February 17, 2005

Justice Supreme Court Nathan Hecht
201 West 14th Street, Rm 104
Austin, TX 78701

Honorable Nathan Hecht:

I am writing in reference to the Supreme Court considering mandating that all counties begin accepting the TexasOnline filing system. I can not stress too strongly my objection to this proposal for Montgomery County.

I have been using mandatory eFiling for eight years. I have 1800 cases currently eFiled in my court through LexisNexis. I average 700 filings a day. Four of the five District Courts in Montgomery County use electronic filing. This implementation will be a disaster to the county and to the hundreds of lawyers that are on the system, not to mention the injustice to the litigants. I am extremely concerned about the contractual obligations of Montgomery County to its provider, LexisNexis, who spent hundreds of thousands of dollars developing this system for Montgomery County.

I have been a presenter on behalf of eFiling in two national conferences: The Dixon Conference and the National Center for State Courts. I have spent years working with CourtLink and now LexisNexis developing a system for our county that is ten times more efficient and offers far more services than TexasOnline. Montgomery County and my court has been a leader in this area for the State and for the Country. This implementation without considering the effect upon Montgomery County would be a terrible blow to all of this County and its citizens. I need time to interface TexasOnline with our current system.

I humbly request, at a minimum, that you exclude Montgomery County from this implementation until i can develop a method to integrate the two systems. I strongly agree in the concept and I am an advocate of eFiling. Please allow me time to work with the State Bar and find a solution.

I would be glad to meet with you at anytime.

Your Humble Servant,


Judge Fred Edwards



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

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

CLERK
ANDREW WEBER

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

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

June 16, 2003

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

Dear Chip:

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

- MDL rules: to adopt rules of practice and procedure for the judicial panel on multidistrict litigation created by chapter 74, subchapter H of the Government Code (HB 4, § 3.02);
- Offer-of-settlement rules: to promulgate rules implementing chapter 42 of the Civil Practice and Remedies Code providing for offers of settlement (HB 4, § 2.01); and
- Class action rules: to adopt rules to provide for the fair and efficient resolution of class actions, including rules that comply with the mandatory guidelines of chapter 26 of the Civil Practice and Remedies Code (HB 4, § 1.01).

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

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

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

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

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

- The Court will next meet to consider the Committee's recommendations and any other matters pertaining to rules changes the week of August 25, 2003.
- Effective September 1, 2003, the Court will amend Rule 407(a) of the Texas Rules of Evidence and adopt MDL rules, both to be disseminated to the bench and bar as widely as possible and published in the October issue of the *Texas Bar Journal* for formal comment. The changes may be revised following comments.
- The Court will also publish in the October issue of the *Texas Bar Journal* for comment an offer-of-settlement rule and a revised class action rule to comply with HB 4's mandatory guidelines, both rules to take effect January 1, 2004.
- In the October issue of the *Texas Bar Journal*, or as soon thereafter as possible, the Court will publish for comment any further changes in the class action rule, any rules changes adopted in accordance with pending recommendations by the Advisory Committee, and any rules changes to be made regarding ad litem fees and referral fees, as recommended by the Jamail Committee.

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

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

entirely capable of assisting the Court in discharging its responsibility.

The following issues are of interest to the Court:

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

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

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

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

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

Sincerely,

Nathan L. Hecht
Justice

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

SUMMARY OF RULES CHANGES TO EXAMINE

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

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

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

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

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





LEVI J. BENTON

JUDGE, 215TH DISTRICT COURT
COURTHOUSE

HOUSTON, TEXAS 77002

February 21, 2005

TELEPHONE
(713) 755-6382

The Honorable Nathan L. Hecht
Associate Justice
Texas Supreme Court
P.O. Box 12248
Austin, Texas 78711-2248

Re: Jury Shuffle under *TRCP* 223

Dear Justice Hecht:

I understand that the Supreme Court Advisory Committee is scheduled to consider proposed changes to rule 223, *Texas Rules of Civil Procedure* when the committee meets on March 4-5, 2005. As you know, this rule gives litigants a right to shuffle the venire panel in civil matters prior to voir dire. This letter addresses why I urge the Committee to recommend abolishing the right to shuffle. These are my personal opinions. I am not speaking on behalf of the Harris County judiciary.

Obviously, litigants and all interested persons want a process that has integrity and fairness. In any given case, one litigant or the other may not like the distribution of the venire panel. The current rule permitting a shuffle after litigants have the opportunity to see the panel and/or read the demographic information about them constitutes an attack on the integrity of the entire process by which jurors are summoned. This redundant shuffle should not be necessary if we indeed have jury statutes that produce lawfully sanctioned juries. My point stated differently is that:

1. We presume (as we must) that the jury selection statutes are constitutional;
2. We presume that the state and county agents charged with implementing and operating under the jury statutes on a daily basis do so in a lawful manner; and
3. The current process of randomly selecting a jury satisfies the constitutional guarantee that every litigant's claim will be decided by a jury of his or her peers. If we are not satisfied that the current system of jury selection meets all constitutional requirements, then we should address those root problems rather than continue to permit a redundant shuffle that does not address problem 1 or 2 above if they are problems and certainly does not cure those problems.

The Honorable Nathan L. Hecht
Associate Justice
Texas Supreme Court

Whether requested by a civil plaintiff or a defendant, a jury shuffle has enormous potential to discredit the work judges, lawyers and others do to bring a sense of fairness to the administration of justice. This potential blight raises its ugly head when the professionals or the relative low income earners or lesser educated are shuffled from back to front or vice versa and one of the litigants leaves the courthouse wondering whether it was the maneuvering of what was purportedly a random draw of citizens in a venire panel or whether it was the evidence admitted during the course of the trial that was the impetus for the result reached by the jury.

When we deal with the jury shuffle or any jury matter our focus should be on the petit jury statutory scheme and the integrity of the processes by which the statutory scheme is implemented and executed on a daily basis. (I intend to express my observations about our petit jury statutory scheme in a letter to Chief Justice Jefferson in the next few days.) Our focus should not be on contemporizing this blight on Texas law. We will not have served our state well if we but modernize the shuffle rule to bring it into the internet age. Instead, we must kill this germ which infects Texas law for good and devote ourselves to the enactment jury rules and statutes that produce juries that reflect cross sections of all communities in the trial court's venue. Since becoming the Judge of the 215th District Court, I have had a few jury shuffles.¹ Though no explanation is demanded or required, the reasons often expressed for the shuffle relate to a desire to alter the educational and/or vocational distribution of the venire panel. The problem with those reasons is that many Texans believe there to be a correlation between race, education and vocation. Therefore, many perceive any request to shuffle as being motivated by racial or other invidious reasons. This perception is not good for the wonderful civil justice system we are honored to participate in. This perception is an unnecessary distraction to all that is good about the jury system.

This letter would not be complete if I did not also address the shuffle in criminal proceedings. Quite obviously, I recognize that we in Texas have two courts of last resort. The Supreme Court has been the leader in developments in Texas law. I profoundly hope the Court will lead the Legislature and the Court of Criminal Appeals in bringing about long needed change in this area.² Jury shuffles and a claimed violation of equal protection rights are almost inseparable twins whenever a reviewing court addresses the jury shuffle in criminal cases. This has been the case approximately six times since 1995 according to my very brief and limited research. Quite often, a person whose skin has been affectionately kissed by the sun, like mine, raises the complaint. Whether the reviewing court found an equal protection violation or not was not my concern. Rather, I concerned myself with the fact that the equal protection argument was a consistent theme raised whenever a complaint on appeal related to a shuffle. This argument distracts from and devalues Texas jurisprudence. It also causes distrust of our civil and criminal justice systems. It leads to the wrong impression regarding our jury selection system. The only remedy for this bad impression is to rid ourselves of the instrument which causes it. If the

¹ I understand that we in Harris County do not maintain statistics on the number of jury shuffles.

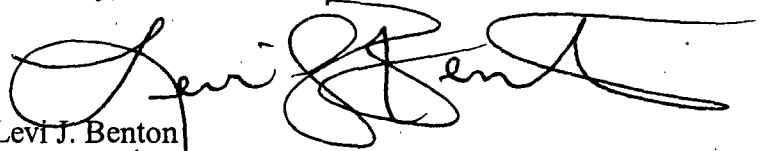
² I have forwarded a copy of this letter to Judge Sharon Keller, Presiding Judge, Texas Court of Criminal Appeals.

The Honorable Nathan L. Hecht
Associate Justice
Texas Supreme Court

Supreme Court will lead by abandoning the rule in civil proceedings, perhaps we can cause the Legislature to critically look at the problems and distractions caused by the rule in criminal proceedings.³

I urge the Advisory Committee to send the Supreme Court a recommendation to abolish the right to a shuffle. If the Advisory Committee and/or the Court are not prepared to go that far, I hope that it will be abolished in counties that use electronic or mechanical methods of selection of persons for jury service pursuant to sec. 62.011, *Texas Govt. Code*. If the rule is not abolished, I urge the Court to include equal protection provisions in the rule. Finally, I regret that I have other obligations that will preclude me from attending the March 4-5 meeting. Please bring my concerns and observations to the attention of the Committee. Feel free to call me if you have any questions.

Sincerely,



Levi J. Benton
Judge, 215th District Court

cc: The Honorable Wallace B. Jefferson
The Honorable Sharon Keller
Mr. Charles Babcock, Chairman, Supreme Court Rules Advisory Committee

³ I am unaware of any appellate opinion addressing alleged equal protection violations arising from a jury shuffle in a civil matter. I have heard of such complaints being made in the trial courts. The absence of appellate complaints is not a good reason to continue to sanction this practice.



JUDGE TRACY CHRISTOPHER

295TH CIVIL DISTRICT COURT

301 FANNIN

HOUSTON, TEXAS 77002

(713) 755-5541

COP

April 27, 2004

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

Re: Rule 223 of the Texas Rules of Civil Procedure

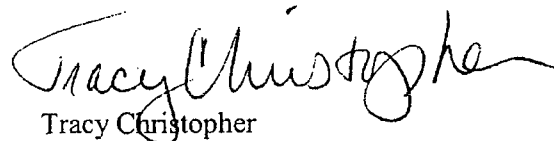
Dear Justice Hecht:

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

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

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

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


Tracy Christopher



DALE WAINWRIGHT
JUSTICE
THE SUPREME COURT OF TEXAS

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

November 8, 2004

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

Re: Exhibits in Court Reporter's Records

Dear Chip:

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

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

Sincerely,

Dale Wainwright
J. Dale Wainwright

cc: Court
Lisa Hobbs, Rules Attorney



COURT REPORTERS
CERTIFICATION BOARD

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Director of Administration

SHERYL JONES

Administrative Assistant

DENISE HANCOCK

M E M O R A N D U M

Thomas R. Phillips, Chief Justice
Justices – Supreme Court

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

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

Date: August 13, 2002

Dear Chief Justice Phillips and Justices of the Supreme Court:

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

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

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

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

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

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

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

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

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

Examples are as follows:

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

OR

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

OR

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

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

OR

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

OR

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

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

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

If we may be of further assistance, please do not hesitate to contact Michele Henricks at:

Phone: (512)463-1747

Email: Michele.henricks@crfb.state.tx.us

Thank you very much for your consideration in this matter.

Sincerely Yours,



Frank Montalvo
Chairman, CRCB

FM/mlh

Enclosure(s)

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

November 11, 2004

**PROPOSED AMENDMENTS TO THE
TEXAS RULES OF CIVIL PROCEDURE**

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

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

Rule 75b Filed Exhibits: Withdrawal

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

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

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

**PROPOSED AMENDMENTS TO THE
TEXAS RULES OF APPELLATE PROCEDURE**

13.1. Duties of Court Reporters and Recorders

The official court reporter or court recorder must:

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

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

Supreme Court Order Relating to Retention and Disposition of Exhibits

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

[This order shall apply only to . . .]

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

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

THE STATE OF TEXAS)
COUNTY OF ^COUNTY NAME)

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

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

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

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

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

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

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

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

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

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

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

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

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